Pierluigi Chiassoni*

Legal interpretation without truth

The paper purports to provide an analytical treatment of the truth and legal interpretation issue. In the first part, it lays down a conceptual apparatus meant to capture the main aspects of the legal interpretation phenomenon, with particular attention paid to the several kinds of linguistic outputs (interpretive sentences in a broad sense) resulting from interpretive activities (in a broad sense). In the second part, it recalls three different notions of truth (empirical truth, pragmatic truth, and systemic truth), focussing, so far as systemic truth is concerned, on the difference between deductive and rhetorical normative systems. In the third, and last, part, it shows in which ways the phenomenon of legal interpretation encompasses truth-apt entities, leaving the choice between austere and liberal alethic pluralism to the reader. A few, final remarks address the formalism/scepticism problem.

Keywords: legal interpretation, truth, interpretive sentence, interpretive formalism, interpretive scepticism

1 THE HAUNTING PROBLEM

My aim in this paper is to provide an exploration—in every respect, a very tentative one—of the connections between legal interpretation and truth. The problem I wish to deal with, a problem that haunts so much work in the field, can be conveyed, roughly speaking, by the following question: Has truth anything to do with legal interpretation? Or, perhaps in more precise terms: Is there any room for truth in legal interpretation, and, if so, where is it?

It goes without saying that any fruitful attempt to deal with this problem requires a careful clarification of the key terms of the inquiry. As a consequence, my paper will be divided into three parts. The first part will be devoted to working out a network of concepts capable of capturing the several aspects of the complex social phenomenon that is usually referred to by the phrase "legal interpretation" in its broadest meaning (§ 2). The second part will identify a few notions of truth that seem suitable to be employed in relation to legal interpretation (§ 3). The third, and last, part, profiting from the conceptual frameworks laid down in the two previous parts, will come to a few conclusions, in my view not totally inaccurate, if only for understanding's sake, about the problem of truth in legal interpretation (§ 4).[1]

* pierluigi.chiassoni@unige.it | Professor of Law at the University of Genoa (Italy).

1 On this issue, see, e.g., Patterson 1996, Diciotti 1999, and Sucar 2008.

2 A CONCEPTUAL FRAMEWORK FOR LEGAL INTERPRETATION

Whatever we mean by the phrase legal interpretation, the process-outcome ambiguity of the word interpretation makes it necessary to draw a basic distinction, namely, between legal interpretation as an activity performed by an individual interpreter at a certain time and place (interpretation activity), on the one side, and legal interpretation as the outcome, product, or output of a corresponding interpretation activity (interpretation outcome), on the other.[2]

To be sure, the distinction may look like a piece of utter triviality. Nonetheless, it is worthwhile making it. Indeed, it suggests a few, in my view not wholly idle, considerations.

(1) Whenever we enquire into the place of truth in the field of legal interpretation, it is reasonable to maintain that the predicate "true," when used as a tool of qualification (that is to say, as a qualification adjective, not as a classificatory one), can be properly applied to ("fits") interpretation outcomes, while it does not apply to interpretation activities.[3] More precisely, it is reasonable to hold that "true" is a predicate appropriate to interpretation outcomes conceived as discourse entities, namely, to certain sentences that are typically written down in legal documents, such as juristic essays, judicial opinions, and documents provided by attornies in a trial.

(2) Provided the predicate "true," as a qualification device, applies to interpretation outcomes as discourse entities, it must be recalled that, from the standpoint of the linguistic uses of jurists and legal philosophers, there are different, and even heterogeneous, kinds of interpretation activity and, accordingly, of interpretation outcomes. I think that, on the whole, juristic usages can be accurately captured by singling out three kinds of "interpretation activities," namely, (a) interpretation activities in a proper sense and practically oriented (fulfilling a practical function); (b) interpretation activities in a proper sense and theoretically oriented (fulfilling a theoretical or cognitive function); and (c) interpretation activities in an improper sense.

2 This distinction is a key point in Giovanni Tarello's theory of legal interpretation. See Tarello 1980: 39-42. See also Guastini 2011: 149ff.

3 Consider the difference between saying "X is true interpretation," "X is a true piece of interpretation," "X is truly interpretation" (classificatory use of "true"), on the one hand, and saying, instead, "Interpretation X is true" (qualifying use of "true"). In the former uses, *true* is tantamount to "genuine," "authentic," "real." In the second use, something that is "true" is something that is "correct" according to some presupposed standards of correctness. This point I will come back to in § 2.

2.1 Practically oriented interpretation in a proper sense

The activities of "legal interpretation" of this kind can be regarded as activities of interpretation in a proper sense for the following reason. As we shall see in a moment, the agents who perform them can properly be said to be "interpreting the law." Furthermore, they are practically oriented, because such interpreting is immediately aimed at solving some practical *quid iuris* problem of "what is the law that applies to this issue?" They accordingly belong in the sphere of practical (ethical) commitments and decision-making.

There are, in my view, two varieties of such activities. These are the activities of textual interpretation and meta-textual interpretation.

2.1.1 Textual interpretation

Textual interpretation consists in translating authoritative legal texts ("legal provisions," "legal norms" in a preinterpretive sense, or "rule-formulations," like constitutional or statutory clauses) into legal norms, or, more precisely, into explicit legal norms. The outcomes of textual interpretation activities are interpretive sentences. These are sentences of the standard form

(IS1) "Legal provision Y expresses norm N1",

(IS2) "Legal provision Y means N1", or

(IS3) "The meaning-content of provision Y is N1"

or sentences in the less elliptical, more precise form

(IS4) "According to the (all things considered) correct interpretive code IC_j and the (all things considered) correct combination of interpretive resources CIR_j, the legally correct meaning-content of provision LP_i is N1"

where N1 is a sentence that amounts to the explicit norm the interpreter presents and defends as the legally correct translation of Y as to some real or imaginary case.[4]

2.1.2 Meta-textual interpretation

Meta-textual interpretation, contrariwise, encompasses a wide range of heterogeneous activities. These interpretive activities are meta-textual since they either precede or presuppose textual interpretation activities. Among the several sorts of outcomes of meta-textual interpretations, it seems worthwhile to consider the following: (1) integration sentences, (2) institutional-status sen-

4 On translation, see, e.g., Haas 1962. On translation and legal interpretation, see the accurate review essay Mazzarese 1998.

tences, (3) gap-identification sentences, (4) antinomy-identification sentences, and, finally, (5) hierarchy-sentences.

Integration sentences come in the standard form

(IGS1) "Implicit norm N_j (also) belongs to the normative set LS_i",
(IGS2) "Norm N_j is an implicit component of the normative set LS_i", or
(IGS3) "The normative set LS_i also includes the implicit norm N_j"

or in the less elliptical, more precise form

(IGS4) "According to the (all things considered) correct integration code IGC_j, the normative set LS_i (also) includes the implicit norm N_j" or
(IGS5) "According to the (all things considered) correct integration code IGC_j, norm N_j counts as an implicit element of the normative set LS_i"

where N_j represents a norm that is implicit because (i) it is not explicit, that is to say, it is neither presented nor defended as the meaning of any individual legal provision (negative condition), but (ii) it is the outcome of applying some integration technique (like analogical reasoning, reasoning a contrario, reasoning a fortiori, reasoning from the nature of things, or reasoning from general or fundamental principles) to a previously identified set of explicit and/or implicit norms (positive condition).[5] Integration sentences typically show up in two sorts of reasoning: on the one hand reasonings that are meant to "bring to the light," or "dig out," the full components of a given normative set, e.g., "the full system" of constitutional laws on freedom of expression; on the other hand reasonings that are meant to fill some previously identified gap in the law.

Institutional-status sentences are classificatory sentences concerning the institutional value or institutional function of previously identified legal provisions, explicit norms, or implicit norms. They are quite common in legal discourse and come, for instance, in the following forms:

(ISS1) "Provision Y is a principle-provision (i.e., it is suitable to express legal principles),"
(ISS2) "Norm N1 is (tantamount to) a supreme constitutional principle,"
(ISS3) "Norm N2 is a defeasible rule of conduct,"
(ISS4) "Norm N3 is a lex specialis," etc.

5 To be sure, integration sentences usually come as part of broader discourses where reasons are offered for them. An example would be as follows: "Norm N_j is an implicit component of the normative set LS_i since it can be derived from N_i, which surely belongs to it, by means of the proper integration technique IT_o".

Institutional-status sentences are typically used, for instance, in reasonings devoted to solving some previously identified antinomy. It must be noticed that they are interpretive sentences according to the notion of interpretation as ascription of sense or value to some previously identified object. They ascribe sense or value according to some presupposed, and previously selected, juristic doctrine ("theory"). Accordingly, their general form is, roughly, as follows:

(ISS5) "According to the (all things considered) correct juristic theory JT_j, provision LP_i / norm N_j counts as F in normative set LS_i".

Gap-identification sentences concern the existence of normative gaps in the law. They state that there is a gap in the law, usually amounting to the absence of any explicit norm for the case at hand. Their standard form is

(GIS1) "Case C_j (say, the opening of wine bars within two hundred meters of a high school) is not regulated by any explicit norm of the relevant legal set LS_i"

or, in a less elliptical way,

(GIS2) "According to the correct textual interpretation of the set of relevant legal provisions LP_j, case C_j is not regulated by any explicit norm."

Antinomy-identification sentences concern the existence of some antinomy, or normative conflict, in the law. They state that there is an incompatibility between two norms that, by hypothesis, are both prima facie relevant to the case at hand. Their standard form is

(AIS1) "Norm N1 is incompatible with norm N2 in relation to case C_j"

or, in a less elliptical way,

(AIS2) "According to the correct textual interpretation of the set of relevant legal provisions LP_j, norm N1 is incompatible with norm N2 in relation to case C_j",

when the two norms involved are explicit, or, more generally,

(AIS2) "According to the correct way of identifying the set of prima facie relevant legal norms, norm N1 is incompatible with norm N2 in relation to case C_j".

Hierarchy-sentences, finally, concern the ranking that obtains between two (or more) previously identified norms. In the most usual form, they state which of two norms, if any, is superior to—takes precedence over, prevails upon, is more valuable than—the other. Their standard form is

(HS) "From the standpoint of the correct hierarchy criterion HC_j, norm N1 is superior to/inferior to/on a par with norm N2."[6]

The correctness of the hierarchy criterion employed depends on the purpose in view of which the mutual ranking of two or more norms must be established.

2.2 Theoretically oriented interpretation in a proper sense

The activities of interpretation in a proper sense—because their performance by an agent properly amounts to "interpreting the law"—that are theoretically oriented are not performed for the immediate purpose of either deciding the case at hand, as it befits judges, or suggesting how it should be decided, as it befits jurists and lawyers.

Rather, they aim to provide information about the hermeneutic capacity of individual legal provisions, that is to say, about the meanings they can bear. They accordingly do not have a practical, decision-making or ethical commitment character. Their outcomes may be properly conceived as conjectural sentences. It seems worthwhile to distinguish three varieties of conjectural sentences corresponding to as many varieties of conjectural interpretation activity broadly conceived: (a) sentences of purely methodological conjecture (methodological-conjecture sentences), which are the outputs of methodological conjectural interpretation; (b) sentences of axiological conjecture (axiological-conjecture sentences), which are the outputs of axiological conjectural interpretation; and finally (c) creative sentences, which are the outputs of creative conjectural interpretation.[7] As we shall see in a moment, the first kind delineates the methodological frame for the meaning of a given provision; the second kind the axiological frame; and the third, and last, kind the methodological innovation frame.

Methodological-conjecture sentences outline the methodological frame for the meanings of legal provisions. They identify, in other terms, the set of alternative meanings into which one and the same legal provision can be translated on the basis of the different interpretive methods (techniques, directives, ca-

6 For instance, "From the standpoint of the proper hierarchy criterion of axiological value (AV), norm P1, being a supreme fundamental principle, is superior to norm P2, which is an ordinary constitutional principle."

7 The term *creative interpretation* is sometimes used to refer to a radical instance of (in my terminology) textual interpretation, where the interpreter translates a legal provision into a norm that does not belong to its methodological frame of meanings (see, e.g., Guastini 2011: 141–142). In my view, it is one thing to "invent" a new meaning for a legal provision; it is another to apply that provision with that new meaning for the practical purpose of deciding the case at hand. This is why I present creative interpretation as a form of conjectural, theoretically oriented interpretation in the proper sense, and not as an extreme variety of textual, practically oriented interpretation.

nons) which, by hypothesis, actually belong to the methodological tradition of the relevant legal culture of the time.[8]

"Methodological frame" sentences are the output of a complex activity having the character of a hermeneutical experiment.[9] On the basis of data drawn from legal experience, the experiment purports to investigate the hermeneutical capacity of a given provision by means of an experimental process consisting of five steps: (1) identifying the interpretive methods (directives, techniques, canons) belonging to the methodological tradition of the legal culture, taking into account both juristic writings and judicial opinions; (2) identifying interpretive codes as possible, alternative combinations of the different methods available; (3) identifying, for each of the interpretive codes previously identified, the set of related interpretive resources, namely, the data necessary to make the directives in the code work, examples being linguistic conventions, parliamentary reports, juristic theories about legal concepts and institutions, judicial opinions, legal principles, sets of norms and principles selected from the macro-system of existing positive law, and moral, political, and legal philosophies; (4) conjecturally interpreting the legal provision according to each of the several codes and corresponding sets of interpretive resources; and (5) formulating the methodological sentence that constitutes the final result of the preceding operations. Methodological-conjecture sentences can be represented by means of a disjunctive and hypothetical form as follows:

> (MCS) "Legal provision LP_i expresses either norm N1, if it is being interpreted according to the interpretive code IC1 and the interpretive resource set IR1, or norm N2, if it is being interpreted according to the interpretive code IC2 and interpretive resource set IR2, or norm ..."[10]

8 Clearly, the present notion of methodological conjectural interpretation represents an attempt to take seriously, and consider the theoretical potentialities of, Kelsen's idea of "scientific interpretation." See Kelsen 1960: chap. VIII.

9 A hermeneutical experiment can be regarded as a form of mental experiment. On mental experiments, see, e.g., Buzzoni 2004: esp. 124–126, 265 ss. See also Brown and Fehige 2011.

10 Perhaps an example may help. Suppose the methodological tradition makes three interpretive directives available to interpreters in relation to legal provision LP_i: the literal-original meaning, the actual intention of the historical legislator, and coherence with supreme constitutional principles. By way of experiment, six interpretive codes may be considered: purely literal, purely intentional, letter-intention, letter-coherence, intention-coherence, and letter-intention-coherence. Corresponding to each code is at least one set of interpretive resources; but, of course, there may be more than one—for instance, the coherence directive, in interpreting LP_i, may be used by taking into account alternative sets of supreme constitutional principles. As a consequence, the methodological conjectural meaning of LP_i is tantamount to the several alternative meanings into which it can be translated on the basis of the six codes with their corresponding interpretive resource sets. It is worth recalling that here the interpreter is performing a purely methodological conjecture, without taking into account the axiological outlooks that may affect the social and cultural viability of certain

Axiological-conjecture sentences outline the axiological frame for the meanings of legal provisions. They identify, in other terms, the set of alternative meanings into which one and the same legal provision can be translated on the basis of the axiological outlooks about the law and legal interpretation (ideologies, philosophies of justice, normative theories of the state and the legal order, normative theories about the "proper" role of judges, etc.): These are outlooks which, by hypothesis, are present in the legal culture of the time, and particular attention will be paid to the ones that, as a matter of social fact, are dominant or influential.

Methodological-conjecture sentences, as we have seen, simply pay attention to methodological devices, without considering the substantive correctness, or the cultural acceptability, of the interpretive outcomes they identify. Contrariwise, axiological sentences also take account of this further aspect, giving it pride of place in the inquiry. Indeed, the idea of an axiological conjectural interpretation mirrors what in my opinion is quite sensible view that the basic ingredients of textual interpretation, as it were, are of two sorts: values and rhetorical techniques. Values (axiological outlooks) intervene both in the selection of the proper set of interpretive directives and in the selection of the proper arrangement of interpretive resources. The experimental machine of axiological conjectural interpretation amounts to a five-step process as follows. (1) The first step is devoted to identifying the axiological outlooks that are influential (even if by a *succès de scandale*) in the legal culture of the time. (2) The second step consists in identifying axiologically correct interpretive codes, that is to say, the codes that, according to each of the several influential axiological outlooks, interpreters must employ in order to interpret the law correctly. (3) The third step consists in identifying the axiologically correct sets of interpretive resources corresponding to each axiologically correct code. (4) The fourth step is devoted to conjecturally interpreting a given legal provision on the basis of the several axiologically correct codes and related sets of interpretive resources. (5) The fifth, and last, step is devoted to formulating the axiological sentence that constitutes the final result of the previous operations. As in the case of methodological sentences, this can be represented by means of a disjunctive and hypothetical form as follows:

> (ACS) "Legal provision LP_i expresses either norm N1, if it is being interpreted according to the axiologically correct interpretive code ACIC1 and the related interpretive resources set ACIR1, or norm N2, if it is being interpreted according to the axiologically correct interpretive code ACIC2 and the related interpretive resources set ACIR2, or norm ..."[11]

methodologically viable outcomes. As we shall see, this further condition distinguishes axiological conjectural interpretation, making it a more realistic and useful enterprise.

11 Here, too, an example may perhaps be of some use. Suppose an interpreter discovers that there are two influential axiological outlooks in society *S*, say, a majoritarian conception of

Finally, creative sentences identify new possible meanings for legal provisions. These meanings are new, since, by hypothesis, (i) they do not belong to the methodological or axiological frame of meanings of the legal provision at stake, and yet (ii) they can be identified and argued for on the grounds of some new interpretive method and a related set of interpretive resources.[12] For this reason, we can understand creative sentences as accounting for a frame of meanings depending on methodological innovation or, in other terms, a creative conjecture. The standard form of a creative sentence runs roughly as follows:

(CCS) "If legal provision LP_i is interpreted according to the new method M_j and the related set of interpretive resources R_j, it will express norm N_j, which represents a new meaning for LP_i".

2.3 Interpretation in an improper sense

Lastly, activities of "interpretation in an improper sense" are such that an agent who performs them does not, properly speaking, really "interpret the law." Indeed, these are activities by which somebody (i) describes how others have interpreted a certain piece of law, or (ii) makes predictions about how others will interpret it, or (iii) formulates prescriptions about the way others should interpret it. Following Giovanni Tarello, I will call these activities interpretation-detection, interpretation-prediction, and interpretation-prescription, respectively,[13] amounting to (i) descriptions of past interpretive outcomes, (ii) predictions of future interpretive outcomes, and (iii) prescriptions (or recommendations) about how to interpret legal texts.

2.3.1 Interpretation-detection

The outcome of activities of interpretation-detection of legal provisions consists in detection sentences. Singular detection sentences describe individual acts of textual interpretation of legal provisions. They may be represented as follows:

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constitutional democracy and a liberal conception. She may also discover that each of the two outlooks is committed to a certain interpretive code, say, a literal-intentional code and a literal-coherence code. She will proceed on this basis to conjecture the axiological frame of meaning of each of the several constitutional provisions.

12 Consider, for instance, an interpreter conjecturing which new meanings constitutional provisions could be translated into, and instead of using the traditional, axiologically approved methods of literal and intentional interpretation, they were interpreted according to a "moral reading" method. Clearly, here I am interested in a rational notion of creative interpretation, namely, one related to the possibility of arguing for the new meanings that have been set forth. Whimsical creations are, at least in principle, outside of the scope of the legal interpretation game as we know it.

13 Tarello 1980: chap. II.

(SDS) "In judicial decision JD_i, provision Y was interpreted by judge J_i (e.g., the Court of Appeals of Yellow Falls) as expressing norm N1."

General detection sentences, contrariwise, purport to describe past interpretive trends. They may be represented as follows:

(GDS) "Over the past time period T_i (e.g., from 1980 to the present), judges J_o (e.g., the country's appellate judges, the county courts, the justices of the highest court) have always interpreted provision Y to mean norm N1."

2.3.2 Interpretation-prediction

The outcome of activities of interpretation-prediction of legal provisions consists in predictive sentences. Singular predictive sentences predict individual acts of textual interpretation of legal provisions. They may be represented as follows:

(SPS) "When case C_i comes up before judge J_i (e.g., the Court of Appeals of Yellow Falls), provision Y in that case will n-probably (e.g., with a likelihood of more than 50 percent) be interpreted as expressing norm N1."

General predictive sentences, contrariwise, purport to predict future interpretive trends. They may be represented as follows:

(GPS) "In the future time period F_o (e.g., over the next two years), judges J_o (e.g., the country's appellate judges) will n-probably (e.g., with a likelihood of more than 50 percent) interpret provision Y to mean norm N1 in cases C."

2.3.3 Interpretation-prescription

Finally, the outcome of activities of interpretation-prescription of legal provisions consists in prescriptive sentences. Singular prescriptive sentences concern individual acts of textual interpretation. They may be represented as follows:

(SPRS) "Provision Y is to be interpreted by judge J_i (e.g., the Court of Appeals of Yellow Falls) as expressing norm N1 in deciding case C_i".

General prescriptive sentences instead concern classes of interpretation acts. For example,

(GPRS) "Provision Y is to be interpreted by judges J_o (e.g., the country's appellate judges) as expressing norm N1 in every type-C case."

According to the interpreter's institutional role, prescriptive sentences may have either an imperative character (think of the highest court issuing any such

prescription to a lower court) or the character of advice or a recommendation, as in the case of juristic prescriptive sentences.[14]

2.4 Taking stock

Apparently, when jurists and legal philosophers claim that there are, or there can be, interpretations that are "true" (or "false"), they think only of some of the different kinds of interpretation outcomes I have considered above. If I am right, they usually have in mind those interpretive outcomes I have here conceived as interpretive sentences and integration sentences. They accordingly seem to have in mind the outputs of practically oriented activities of interpretation in a proper sense, in the textual and meta-textual varieties.[15] These are the items whose truth they care about. So, in the views of some jurists and legal philosophers, interpretive sentences and integration sentences are truth-apt entities. Are they right? Which truth do they have in mind when they make such claims? Which truth may be suitable to such sentences? Which truth-conditions make them true? In order to provide an answer to these questions, a brief incursion into the territory of truth is in order.

3 THREE NOTIONS OF TRUTH

In the opening passage of his farewell lecture, What Is Justice? Hans Kelsen recalls a scene from the Gospel of John (18:38):

> When Jesus of Nazareth was brought before Pilate and admitted that he was a king, he said: "It was for this that I was born, and for this that I came to the world, to give testimony for truth." Whereupon Pilate asked: "What is truth?" The Roman Procurator did not expect, and Jesus did not give, an answer to this question; for to give testimony for truth was not the essence of his divine mission as the Messianic King. He was born to give testimony for justice, the justice to be realized in the Kingdom of God, and for this justice he died on the cross.[16]

14 The set of notions in the text represents a radical revisitation of Chiassoni 1999: 21 ss, Chiassoni 2011: chap. II, and Chiassoni 2014.

15 Ronald Dworkin sees "propositions of law" as entities able to be either true or false. Dworkin's "propositions of law" are, however, not genuine normative propositions (which, as commonly understood in legal theory since Kelsen, "describe" norms); they are rather sentences expressing *norms* ("normative claims"): individual or general norms, explicit or implicit norms, proposed, invoked, used, or applied as "true" in connection with a legal system. The nature of such "propositions" is, more precisely, that of norms identified by means of constructive interpretation. Indeed, Dworkin makes it clear that "[a]ccording to law as integrity, propositions of law are true if they figure or follow from the principles of justice, fairness, and procedural due process that provide the best constructive interpretation of the community's legal practice" (Dworkin 1986: 4–5, 225; see also Dworkin 2006: 14–15).

16 Kelsen 1957: 1.

In his report of the evangelic scene, Kelsen reminds us that the word truth can be used in many different ways. As a consequence, it would be possible to adopt, to begin with, a reductionist strategy as to the problem "truth and legal interpretation." Indeed, if truth is being understood as one of the names for justice, the problem of whether interpretations can be "true" becomes the problem of whether they can be "just," or "in accordance with justice." Furthermore, if, following Kelsen, we also endorse a nonobjectivist and noncognitivist metaethical outlook, the problem of truth in legal interpretation totally changes its character. From being, at least apparently, an epistemic problem, it turns into a practical issue: It becomes, more precisely, the problem of taking sides within a field characterized by a plurality of competing political, legal, and moral views, a field that is typically rife with conflicts of material and spiritual interests between individuals and groups engaged in a never-ending search for their own social happiness under conditions of scarcity.

Of course, we may opt for not embracing the reductionist strategy suggested by Kelsen's passage. If we do so, a further option immediately comes up. This is the option between two varieties of alethic pluralism: austere alethic pluralism and broad alethic pluralism. Austere alethic pluralism contemplates two notions of truth: empirical truth and analytic truth. Broad alethic pluralism, contrariwise, contemplates four notions of truth: besides empirical truth and analytic truth, it also considers pragmatic truth and systemic truth. If, in a purely experimental and tentative way, we decide to adopt a position of broad alethic pluralism, and leave analytic truth aside, we may contemplate three notions of truth that, at least prima facie, can be considered fit to be applied in the field of legal interpretation. These are: (1) empirical truth, (2) pragmatic truth, and (3) systemic truth.[17]

3.1 Empirical truth

Empirical truth is epistemic correctness (epistemic adequacy) in connection with experience.

We may consider three kinds of discourse-entities as being uncontroversially apt for empirical truth: (1) singular descriptive sentences, (2) singular predictive sentences, and (3) theoretical sentences.

Singular descriptive sentences are the outcome either of observing or experiencing some actual individual event, fact, state of affairs, behaviour, etc., or of

17 Of course, as discourse entities, interpretation outcomes are apt for analytic truth and falsity, for they can be tautological or self-contradictory. Austere alethic pluralism is the mark of logical positivism and empiricist epistemology. See, e.g., Ayer 1952, and von Wright 1951. On (broad) alethic pluralism, see, e.g.: Pedersen and Wright 2012: "'Pluralism about truth' names the thesis that there is more than one way of being true". See also Pedersen and Wright 2013, Wright 2001, Wright 2013, and Lynch 2001.

remembering some individual event, fact, state of affairs, behaviour, etc., that has been observed or experienced in the past. Singular descriptive sentences accordingly have a direct link with experience: They refer to singular facts or events in time and space that have been observed or experienced by the agent who formulates them, for instance, the number of participants at meeting C ("The Glorious Friends of Pink Whales") in T_i (January 2, 2011) at L_i (Winter Springs); the behaviour of Y in T_j, L_j; the colour of X's robe in T_o, L_o; the organoleptic properties of the wine in bottle B in T_p, L_p; the 1944 eruption of the Vesuvius; etc. They are true (E-true) if, and only if, things are (were) indeed as they say they are (were).[18] Of course—ruling out at once any form of scepticism, idealism, and post-modernism—it is assumed that the things—events, states of affairs, acts, etc.—acting as truth-makers do exist independently of the beliefs, preferences, and interpretations of those who formulate descriptive sentences.

Singular predictive sentences are the outcome of anticipatory cognitive inquiries based on information acquired from experience, and stating that something will (probably) be the case.[19]

Theoretical sentences, contrariwise, include physical laws, maxims of experience, general descriptive sentences, sentences purporting to explain how complex phenomena are, etc.[20] They have no direct relation to experience. In fact, the truth of these sentences depends directly on their agreement ("coherence") with other linguistic entities (i.e., with a determined set of singular descriptive sentences), and only in a mediated way on experience.[21]

Concerning singular descriptive sentences, empirical truth consists in the agreement, or correspondence ("fit"), between the sentence in question ("words"), on the one hand, and experience ("the world"), on the other. As concerns singular predictive sentences, empirical truth consists (a), ex ante or at the moment of their formulation, in their being adequately supported by true descriptive and theoretical sentences and (b), ex post, in their agreement with the way experience turned out to be.[22] Lastly, as concerns theoretical sentences,

18 In the words of Aristotle, "Saying of what that is that it isn't, or of what it is not that it is, is false [...] saying of what that is that it is, or of what is not that it is not, is true" (Aristotle, *Metaphysics*, as quoted in Marconi 2007: 6).

19 See von Wright 1951: 13–15.

20 Physical law: "Water boils at 100°C"; rule of experience: "Murderers always go back to the scene of the crime"; general descriptive sentence: "Ravens are black"; explanatory sentence for a complex phenomenon: "The law is made up of norms."

21 From this perspective, then, the notion of truth as coherence and the notion of truth as correspondence do not represent the cores of two opposed and irreconcilable theories of truth. The opposition arises whenever the idea of coherence is part of an idealistic conception of truth. On this point, see, e.g., Quine 1987: 212 ss.

22 This is not the place to take up the problem of "contingent futures" and the truth of predictive sentences at the moment they are issued. MacFarlane 2003 appears to argue for the double possibility I consider in the text. See also von Wright 1951: 13–15.

empirical truth depends on their agreement ("coherence") with other sentences, on the "fit" between "their words" and "other words," which include some empirically true singular descriptive sentences.

3.2 Pragmatic truth

Pragmatic truth is instrumental correctness (instrumental adequacy) in connection with a previously defined set of goals. Attention should be drawn here to two heterogeneous groups of discourse entities that can be considered to be apt for pragmatic truth: On the one hand are theoretical sentences belonging to the realm of empirical knowledge and scientific research; on the other hand are what might be termed practical sentences belonging to the realm of normative ethics in the broadest sense of the expression.

With regard to theoretical sentences, empirical thesis ("claims") and (pieces of) scientific theories are true if, and only if, they "work" successfully as tools for improving the human condition: as pieces of information that help improve situations, remove obstacles, or dissipate uncertainties. The success of an empirical claim or a scientific theory is measured against the reliability of the forecasts it can suggest to agents in connection with their existential goals.[23]

With regard to practical sentences (norms, principles, ethical value judgments, etc.), the pragmatist notion of truth is bound up with consequentialist ethics.[24] Any practical sentence (a moral judgment, a judicial ruling, a general norm of behaviour, a legal principle) is pragmatically true (P-true) if, and only if, it is instrumentally adequate in view of some set of goals which has been previously identified as being ethically valuable. For instance, the singular moral judgment "It is fair to overthrow the tyrant Titus" is pragmatically true (P-true) if, and only if, by hypothesis, overthrowing the tyrant Titus will have consequences that are ethically more favourable (valuable) than unfavourable (nonvaluable)—provided, for instance, that such overthrowing will maximize the goal of people's happiness, and that goal is our selected, privileged goal. Likewise, the general norm of political morality "Tyrants ought to be overthrown" is pragmatically true (P-true) if, and only if, (a) it is a reliable prediction that from the adoption and constant enforcement of this norm situations will follow that will procure, for instance, the widest political freedom for the largest number of people, and (b) this outcome is assumed to be morally valuable and deserving to

23 According to John Dewey, ideas and theories are true if they are "instrumental to an active reorganization of the given environment, to a removal of some specific trouble and perplexity [...]. The hypothesis that works is the *true* one" (Dewey, *Reconstruction in Philosophy* (1920), as quoted in Davidson 2005: 8 n. 3). Burgess and Burgess (2011: 3) characterize the "Pragmatist or utility theory" of truth, among "traditional theories," as claiming that a "belief is true iff it is useful in practice."

24 On the notion of consequentialist ethics, see, for instance, Lecaldano 1996: 115 ss.

be achieved ahead of any other outcome. Clearly, when used in connection with practical sentences like the ones I have just considered, the pragmatist notion of truth (P-truth) promotes the rational evaluation of norms and ethical value judgments, that is to say, their evaluation from the standpoint of instrumental, means- ends rationality.

3.3 Systemic truth

Systemic truth is truth within a system: It is, more precisely, correctness (part-to-whole adequacy) in connection with a previously identified system.

Systems are sets of interrelated items (ideas, beliefs, sentences, symbolic formulae, etc.). With regard to normative systems (i.e., systems including norms of behaviour), and for the purpose of the present inquiry, it seems useful to distinguish two basic types: deductive normative systems and rhetorical normative systems.

A deductive normative system is a set of sentences

(1) that is composed of the totality of the logical consequences of a finite set of axioms, forming the axiomatic basis of the system;

(2) whose axiomatic basis is made up of norms that connect generic cases to normative solutions in some universe of discourse (like "Every human being has a right to free speech," "No search or seizure shall be allowed without a judicial warrant," or "Congress shall make no law respecting an establishment of religion").[25]

Any deductive system is identified by two closed sets of items: The set of original or primitive norms (axioms) and the set of transformation rules, consisting in rules of deductive inference. There are accordingly two kinds of sentences within any deductive normative system as here understood: original or primitive sentences, on the one hand, and nonoriginal or derivative sentences, on the other. Axioms and transformation rules are the original sentences of the system. They are set by stipulation: They are accordingly entities apt for pragmatic truth (P-true entities). Nonoriginal sentences are the derivative norms of the system; they are systemically true (S-true) if, and only if, they derive from axioms in accordance with the system's transformation rules. Provided that axioms are syntactic entities and transformation rules are rules of deductive inference, the systemic truth of derivative sentences in deductive systems is tantamount to genetic formal correctness, which is independent of the meaning of the expressions.

A rhetorical normative system, contrariwise, is a set of sentences

25 For this notion of a normative system I have drawn inspiration from the idea of an axiomatic system set forth in Alchourrón and Bulygin 1971: chap. IV.

(1) that is composed of the totality of the rhetorical consequences (in a sense I shall clarify in a moment) of a finite set of axioms forming the system's axiomatic basis;

(2) whose axiomatic basis is made up of a finite set of supreme normative provisions, namely, of a closed set of authoritative, fixed sentences that are assumed, by their interpreters and users, to be apt for expressing the system's supreme norms (such as "Individuals have inviolable rights," "No person shall be deprived of life, liberty, or property without due process of law," "No religion shall be established by law," "Individual privacy shall be protected," and "Each individual shall be granted a fair amount of primary goods").[26]

The distinction between original or primitive sentences, on the one side, and nonoriginal or derivative sentences, on the other—a distinction we encountered while dealing with deductive systems—holds for rhetorical systems as well. There are nonetheless a few, quite substantial differences that mark them off from the former.

First, the original sentences of a rhetorical system are not norms but norm-formulations: They are in fact supreme provisions (axioms) and transformation-rule provisions. I have just made clear what I mean by the supreme provisions of a rhetorical system. Turning to transformation-rule provisions, these are sentences that are assumed, by their interpreters and users, to be apt for expressing the system's transformation rules. In turn, transformation rules establish the criteria for identifying (what I shall call) the rhetorical consequences of the system's supreme provisions. Notice that the identification of transformation rules on the basis of transformation-rule provisions is necessarily entrusted to the interpreters and users of the system. Indeed, there is no such thing as a self-interpreting provision. This in turn means (a) that the transformation (translation) of transformation-provisions into transformation-rules ultimately depends on discretionary, though not necessarily arbitrary, choices by the interpreters, and (b) that such choices will typically be affected by practical considerations (ethical principles, concern for values and outcomes, sensitivity to material interests, etc.).

Second, rhetorical systems work on the basis of two basic kinds of transformation-rules: interpretive directives and integration directives.

Interpretive directives are instructions about the proper ways of translating supreme provisions into the system's explicit, supreme norms, such as "Supreme provisions shall be construed in accordance with the conventional meaning of

26 For the model of a rhetorical normative system I have drawn inspiration both from Leibniz's idea of a "model code" and from Kelsen's notion of a "static normative system." Leibniz 1667: §§ 7, 22, 23, 24, 25 (on Leibniz as a lawyer, see Tarello 1976: 133–40). Kelsen 1945: 112. Both models, it goes without saying, have been stuffed with a generous and spicy dose of sceptical interpretivism.

their expressions," or "... according to the nature of things," or "... as expressing a coherent set of supreme norms," or "... as expressing a set of efficient, wealth--maximizing, supreme norms," or "... in accordance with their authors' original intent," and so forth.

Integration directives, by contrast, are instructions about the proper ways of identifying the implicit norms of the rhetorical system: They may include such directives as "Similar cases shall be treated alike," "Different cases shall be treated differently," and "Norms of detail are instances of wider background principles."

Clearly, these rules are not rules of deductive inference. The consequences they bring to the fore are not a matter of strict derivation from original sentences working as premises. They are "consequences," insofar as they can be presented, and justified, as the outcomes of interpretation and integration activities from previously identified provisions or explicit or implicit norms.

Third, nonoriginal or derivative sentences are explicit or implicit norms that represent the rhetorical consequences of the system's original sentences (supreme normative provisions and transformation-rule provisions). It may be worthwhile emphasizing that a rhetorical system's nonoriginal or derivative sentences encompass five kinds of items:

(1) explicit interpretation-directives and explicit integration-directives, which are as many translations (transformations, or "reformulations") of transformation-rule provisions;

(2) implicit interpretation-directives and implicit integration-directives, as identified by the interpreters on the basis of previously identified explicit transformation directives;

(3) explicit supreme norms;

(4) implicit supreme norms; and

(5) implicit norms of detail. These, in turn, include two sets: the set of implicit norms immediately derived from explicit and/or implicit supreme norms by way of concretization or specification (first-order implicit norms of detail); the set of implicit norms derived from combinations of supreme norms and previously identified implicit norms of detail (second-, third-, ... n-order implicit norms of detail).[27]

27 An example (freely drawn from Alexy 2002) may help understand what I mean in the text. Given the supreme norm "The social status of convicted people having duly served their sentence shall be protected," and given the implicit norm of detail "No television documentary shall be broadcast in the imminence of the discharge of a convicted person having served a thirty-year prison sentence," a further, second-order implicit norm of detail can be identified—e.g., by analogical reasoning—claiming that "No review essay shall be published in any magazine in the imminence of the discharge of a convicted person having served a thirty-year prison sentence."

Supreme provisions and transformation-rule provisions are a matter of stipulation. They are stipulated by the authority that enacts them. Accordingly, since they are texts waiting to be (properly) interpreted, they are entities which are apt both for pragmatic truth (P-true) and for systemic truth (S-true), only in an indirect, mediated way, namely, depending on the pragmatic or systemic truth of the supreme explicit norms and the explicit interpretation-directives and integration-directives into which they can be translated. Pragmatic truth and systemic truth also work as implicit supreme norms and implicit norms of detail alike.

Supreme norms are systemically true (S-true) if, but only if, they cohere with each other according to a criterion of reasonable coherence. Such a criterion allows for incoherencies among supreme norms, provided they can be settled in reasoned ways—for instance, on the basis of reasonable hierarchies in relation to different classes of cases as suggested in Robert Alexy's theory of balancing.

Norms of detail are systemically true (S-true) if, but only if, they cohere with supreme norms—and with other norms of detail as well, if necessary. There are—it is worthwhile noticing—at least five ways in which "coherence" may be understood in a rhetorical normative system by its interpreters and users: (1) coherence as material derivation; (2) coherence as logical consistency; (3) coherence as instrumental adequacy; (4) coherence as teleological adequacy; and, finally, (5) coherence as axiological adequacy.

With regard to the relationships between derivative norms of detail and supreme norms, the five notions of coherence work as follows.

A derivative norm of detail satisfies the requirement of coherence as material derivation if, and only if, it "takes its content" from the content of some supreme norm, so as to represent a specification or concretization of that norm.

A derivative norm of detail satisfies the requirement of coherence as logical consistency if, and only if, it is not logically incompatible, whether by contradiction or opposition, with any supreme explicit or implicit norm.

A derivative norm of detail satisfies the requirement of coherence as instrumental adequacy if, and only if, the behaviour it prescribes or the state of affairs it constitutes or promotes are (the most) efficient means for achieving the goals set in supreme norms.

A derivative norm of detail satisfies the requirement of coherence as teleological adequacy if, and only if, it fosters a goal that is compatible with the goals fostered by supreme norms.

Finally, a derivative norm satisfies the requirement of coherence as axiological adequacy if, and only if, it respects the same scale of values that is endorsed in the supreme norms.[28]

28 See Chiassoni 2011: chap. IV. Some forms of coherence considered in the text are clearly of a pragmatic type. In such cases, systemic truth is pragmatic truth in relation to a certain

The systemic truth of norms in rhetorical systems, to conclude, is not formal but material correctness: It is material coherence (consistency, adequacy), which is, and can be, measured on the basis of the meaning of the norms that are being compared.

3.4 Taking stock

Having thus travelled across the province of truth, it is time to consider briefly what we have seen.

Clearly, empirical truth, pragmatic truth, and systemic truth represent heterogeneous criteria of evaluation, which are fit for heterogeneous entities.

Pragmatic truth is tied to instrumental, means-ends rationality.

Systemic truth, so far as rhetorical normative systems are concerned, is material correctness (material adequacy) in connection with supreme norms and transformation rules, the identification of which is necessarily entrusted, as we have seen, to the discretion, ethical preferences, and worldviews entertained by the interpreters and users of the system.

In light of the preceding points, broad alethic pluralism, that is to say, broad pluralism concerning the notion of truth, seems to endorse, all things considered, an unnecessarily inflationist account of truth. An austere pluralist, who will only accept empirical and analytic truth, may query why should we talk about "pragmatic truth" and "systemic truth" when we can instead resort to comfortable expressions like "instrumental correctness," "material correctness," and "material coherence," which provide clearer and more straightforward ways to refer to those evaluation criteria.

I will not adjudicate who is right in the dispute, although I think the austere pluralist does have a good case.[29] In fact, any such adjudication would be

rhetorical-normative system. Roughly in the same vein as Dworkin, Michael Lynch (2001: 736, 737, 738) characterizes the truth of "propositions of law" not in terms of correspondence with an independent, objective reality ("it is unlikely that they are true in virtue of referential relations with mind-independent objects and properties"), but in terms of coherence ("we think that a proposition of law is true when it coheres with its immediate grounds and with the grounds of propositions inferentially connected to it. In short, legal truth consists in coherence with the body of law"), and, more precisely, following Crispin Wright's idea of "superassertibility," in terms of "supercoherence" ("Thus perhaps what makes a proposition of law true is that it durably or continually coheres with the body of law [...]. In short, juridical truth might turn out to be realized by 'supercoherence' with the body of law, where a proposition can fail to have this property even if it coheres with the law in the short run, or coheres with judicial decisions that are later overturned"). The idea that truth, in the realm of ethics, is truth "as coherence" is endorsed by Quine 1978 (1981: 63): "Science, thanks to its links with observation, retains some title to a correspondence theory of truth; but a coherence theory is evidently the lot of ethics." It is also adopted by Dorsey 2006.

29 For a defence of "broad pluralism" concerning truth, on the basis of a property or function shared by the different notions, see, for instance, Lynch 2011, and Pedersen and Wright 2012: § 4.1.

idle. Indeed, whatever view we accept about truth, the point that is worthwhile emphasizing is the following: There are clear and relevant differences between the notions of empirical truth (epistemic correctness in relation to experience), pragmatic truth (instrumental correctness in relation to a previously defined set of valuable goals), and systemic truth (holistic, formal, or material, correctness in connection with a previously identified system). Keeping this in mind, we can at last turn to the problem from which I started.

4 WHICH TRUTH IN LEGAL INTERPRETATION?

Let us recall the problem: Has truth anything to do with legal interpretation? Is there any room for truth in legal interpretation, and, if so, where is it?

We are now in a position to outline a solution. In fact, the preceding analysis seems to have deprived the problem "truth in legal interpretation" of any momentousness. Now it seems to lie bare like a dissected flower on a botanist's table, definitely stripped of any beauty and mystery. Let's take advantage of this painful dissection in order to fix a few points.

1. Empirical truth is suitable—there seems to be no room for doubt—to the outcomes of the activities consisting in interpretation-detection: Detection sentences, whether singular o general, being genuine descriptive sentences, are apt to be empirically true or false.

2. The outcomes of the activity of interpretation-prediction, in turn, are apt to be assessed in terms of both pragmatic truth and empirical truth. A prediction sentence is empirically true ex ante if it appears well justified on the basis of the information available at the time of its formulation, and ex post whenever the prediction is being confirmed by the behaviour of the interpreters it refers to (see § 3.1. above). It is also pragmatically true insofar as, by virtue of its presumable epistemic correctness, it is useful in obtaining (what are regarded as) valuable results, such as preventing lawsuits doomed to failure, preventing unnecessary waste of resources, suggesting reasonable transactions, and suggesting successful judicial strategies.

3. The outcomes of the activity of prescription-interpretation, provided they are normative entities (interpretative prescriptions), are not apt for empirical truth. Instead, they are apt both for pragmatic truth (instrumental correctness in relation to valuable ethical-normative goals), and for systemic truth (material correctness in relation to a legal system).[30]

4. The outcomes of the activity of conjectural interpretation, in the two varieties of methodological and axiological conjecture, are, to be sure, apt for pra-

30 This conclusion may sound to some as a *petitio principii*. I will come back to this point at the end of the article.

gmatic truth. Indeed, they can be P-true sentences, insofar as the information they provide concerning the hermeneutic scope (or "frame") of a legal provision is in fact useful in getting to (what are being regarded as) valuable results, such as advantageous amendments to a legal text, successful legal argumentation, or a fairness-promoting judicial overruling.

Are conjectural sentences also apt for empirical truth? Here I think the answer cannot be straightforward. We could start by saying that conjectural sentences are discourse entities apt for experimental truth. Indeed, as we have seen, they are the outcome of hermeneutical experiments, which, as I said, are a species of thought experiments. Now, the truth of a sentence that represents the result of a thought experiment depends on two factors: First, the data on which basis the experiment has been performed must be empirically true; second, the calculations the inquirer has performed on the basis of those data must be correct. Accordingly, experimental truth is a matter of agreement with both experience and reason, for calculations belong to reason. If we understand experimental truth in this way, conjectural sentences are in fact apt for it. On the one hand, conjectural sentences can satisfy the empirical truth requirement. Indeed, the data about the methodological tradition, the axiological outlooks, and the corresponding sets of interpretive resources that the conjectural interpreter makes use of in his inquiry are apt for empirical truth. On the other hand, conjectural sentences can also satisfy the exact calculation requirement. The use of interpretive directives is not an interpreter's absolute discretion game. Contrariwise, interpretive directives—once they have been duly precisified—call for methodical application that, from a structural point of view, is like a calculus (the output of which can also be given the form of a deductive piece of reasoning). Accordingly, conjectural interpreters may go wrong; and it is always possible for other members of the legal culture to control whether they have used the several interpretive codes and related sets of interpretive resources in a technically proper way, that is, whether they did, or did not, make any mistake in calculating hermeneutical outputs in interpreting a legal provision on the basis of a certain interpretive code and a certain set of interpretive resources.

5. The outcomes of the activity of creative interpretation are apt for pragmatic truth. In particular, they are P-true whenever the new understanding that they supply, on the basis of some new interpretive method, appears to be useful in obtaining (what are being regarded as) valuable results, such as effecting a significant change in the law in force without changing the wording of its authoritative sources (the legal provisions).

6. Finally, turning to the outcomes of the activities of textual and metatextual interpretation, surely they are apt neither for empirical truth nor for experimental truth. That is because they are practical, decision-making entities, which either establish what the legally correct meaning of a provision is or point to the

legally correct place for a principle within the system, or they set the legally proper way of filling up a gap, and so on. Obviously, they are apt for both pragmatic and systemic truth.

As concerns the problem of the relation between legal interpretation and truth, it thus seems that we may come to the following conclusions, not prima facie unreasonable.

First. If we take a stance of broad alethic pluralism, the entire province of "legal interpretation" in the broadest sense of the phrase turns out to be a truth--apt province. It must be emphasized, however, that such a province is not apt for one and the same kind of truth. Rather, different truth-apt entities are apt for different kinds of truth, depending on whether they are detection-sentences, prediction-sentences, conjectural sentences, prescription sentences, interpretive sentences, integration sentences, normative-status sentences, gap-identification sentences, antinomy-identification sentences, or hierarchy sentences.

Second. If, contrariwise, we take a stance of austere alethic pluralism, centred on the dualism of empirical and analytic truth, the room that remains for truth in the realm of legal interpretation is tantamount to the room for empirical truth. It concerns detection and prediction sentences, on the one side, and methodological and axiological sentences, on the other—these latter with the qualifications I mentioned a moment ago in dealing with experimental truth.

As I have pointed out before, all these sentences, are the outcomes of interpretation activities in either an improper sense of the term or in a proper but theoretically oriented sense of the term (see § 2 above). As a consequence, from the standpoint of austere alethic pluralism, it seems necessary to reach a quite dim conclusion: that there is actually no room for truth when proper, practically oriented interpretation is at stake. Indeed, as we have seen, the outcomes of textual and metatextual interpretation are not entities apt for empirical truth. Accordingly, from this perspective, the province of legal interpretation (proper) is, properly speaking, a province without truth.

Third. There seems to be no mystery as to the proper theoretical way of understanding and settling the problem of truth in legal interpretation, once the several possible stances that may be taken as to the issue are brought to the fore—for instance, once we set about dealing with the issue on the basis of the distinction between broad and austere alethic pluralism.

I must consider one final point before concluding.

Problems and disputes may show up concerning which outcomes of which legal interpretation activities (broadly conceived) are apt for which kind of truth.

There has been a well-known debate for years about the proper way of understanding the "nature" of legal interpretation—and more precisely, in the ter-

minology I have set out here, the nature of textual interpretation as usually performed by judges. It is commonplace to distinguish three groups of competitors in the debate: the integral cognitivists ("legal formalists"); the noncognitivists ("sceptics," "legal realists"); and the middlemen, represented by moderate cognitivists.

Integral cognitivists claim textual interpretation by judges always to be a matter of objective knowledge: Interpreting, they say, is tantamount to grasping the true meaning of the laws as to their application to individual cases.[31]

Moderate cognitivists, by contrast, claim that there are cases where the judicial interpretation of legal provisions is, and can be, a matter of objective knowledge ("easy cases"), but there are also cases where this activity cannot be a matter of objective knowledge, and must instead be a matter of decision and evaluation ("hard cases"). This would be so, they claim, for the following reasons. Legal provisions are sentences in a natural language; sentences in a natural language have an objective meaning, which is provided to them by linguistic conventions; unfortunately, linguistic conventions may run out under the pressure of individual cases; in such situations, linguistic indeterminacy comes up, in the form of linguistic ambiguity and vagueness, and it can be cured only by means of judicial discretion. Such indeterminacy, however, is moderate, not radical: It is not the case that legal provisions, being sentences in a natural language, prove indeterminate all the way through, i.e., in every possible situation; there are in fact situations where they prove to be determinate; indeed, if that were not the case, natural languages would be utterly pointless as a means of human communication. As a consequence—moderate cognitivists would conclude—the noncognitivists, who claim legal provisions to be radically indeterminate, are wrong.[32]

In this paper I have taken sides with noncognitivists. I have claimed that interpretive sentences, being the outcomes of the textual the interpretation of legal provisions, are never apt for empirical truth. As you may remember, I have done so for several reasons. It is time, by way of conclusion, briefly to recall and put them in perhaps a clearer form, also by way of a reply to the argument of the moderate cognitivists.[33]

First, I have suggested that textual interpretation is, and cannot be but, a decision-making, practically oriented, value-laden, ideologically compromised activity. Otherwise, it would be tantamount to interpretation-detection or to conjectural interpretation. Indeed, when judges say, for instance, that legal provision LP_i means N1 as to the regulation of case C_i, they neither simply detect

31 On interpretive cognitivism in Western legal thought, see, e.g., Chiassoni 2009: chap. IV.

32 For an accurate defence of moderate cognitivism, see Sucar 2008: chap. 1, § 2, and pp. 362–75.

33 I have set forth more arguments for interpretive noncognitivism in the following papers: Chiassoni 2010, Chiassoni 2012a, Chiassoni 2012b, and Chiassoni 2015.

that LP_i has in fact been given such a meaning, nor do they simply conjecture that LP_i can bear such a meaning. Rather, they establish—select, adopt, defend—that meaning as the legally correct meaning of LP_i for the purpose of deciding case C_i.

Second, textual interpretation takes place, and is in fact a key practice, within those sophisticated, complex specimens of rhetorical normative systems that are "our" legal systems.[34]

Third, legal provisions are not self-interpreting devices: They need (authorized) interpreters to transform them into norms to be applied to individual cases, on the basis of some discrete sets of interpretive directives that legal interpreters have to necessarily select and subscribe to.

Fourth, the fact that legal provisions are sentences in a natural language does not in itself prove that their legally correct meaning is tantamount to their conventional linguistic meaning: Moderate cognitivists, who make such a claim, incur in a clear logical fallacy (*a posse ad esse non valet consequentia*).[35]

Fifth, in sophisticated rhetorical systems like our legal systems, legal indeterminacy is not tantamount to linguistic indeterminacy (be it syntactic or semantic, or owed to the failure of pragmatic-enrichment criteria): It is in fact a methodological and axiological indeterminacy, moving beyond the boundaries of linguistic indeterminacy.

Sixth, as a consequence, moderate cognitivists, in their philosophical-linguistic argument for the moderate indeterminacy of legal provisions, provide an account of judicial interpretation in our legal systems that is misleading and, all things considered, wrong.

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34 Properly speaking, our legal orders have a dual nature: They are at the same time both dynamic-formal systems, in what concerns the production of authoritative legal texts, and static-rhetorical systems, in what concerns the identification of explicit and implicit norms, together with their relative institutional value. They also show up as deductive micro-systems, whenever jurists also undertake the task of systematization along the lines of Alchourrón and Bulygin.

35 Furthermore, if moderate cognitivists maintained that the conventional linguistic meaning is the legally correct meaning in virtue of a legal convention, their claim would be contingent on individual legal experiences, and thus be false as a universal claim.

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