

# *Legal Interpretation without Truth*

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## *Foreword*

My aim in this paper is to provide an exploration – by all means, 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 terms: Has truth anything to do with legal interpretation? Is there any room for truth in legal interpretation, and, if so, where is it?

It goes without saying that any reasonable 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 building up 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 widest meaning (§ 1).

The second part will identify a few notions of truth that seem apt to be employed in relation to legal interpretation (§ 2).

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, to the problem of truth in legal interpretation (§ 3)<sup>1</sup>.

## *1. Legal interpretation*

Whatever we mean by the phrase “legal interpretation”, the process-outcome ambiguity of the word “interpretation” makes the drawing of a basic distinction necessary: namely, sorting out legal interpretation as an *activity* (interpretation-

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<sup>1</sup> On this issue, see, e.g.: D. Patterson, *Law and Truth*, New York - Oxford, Oxford University Press, 1996; E. Diciotti, *Verità e certezza nell’interpretazione della legge*, Torino, Giappichelli, 1999; G. Súcar, *Concepciones del derecho y de la verdad jurídica*, Madrid, Barcelona, Buenos Aires, Marcial Pons, 2008.

activity), on the one side, and legal interpretation as the *outcome, product, or output* of an interpretation-activity (interpretation-outcome), on the other<sup>2</sup>.

To be sure, such a distinction may seem a piece of utter triviality. Nonetheless, it is worthwhile making, for it leads to a few, in my view not wholly preposterous, considerations.

1. Whenever we enquire upon the place of truth in the field of legal interpretation, it is reasonable to maintain that the predicate “true”, when is being used as a tool of qualification (as a qualification adjective, not as a classificatory one), can be properly applied (“fits”) to interpretation-outcomes, while it does not do for interpretation-activities<sup>3</sup>. More precisely, it is reasonable to hold that “true” is a predicate convenient 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 forensic acts.

2. Provided the “true” predicate, as a qualification device, applies to interpretation-outcomes as discourse entities, it must be recalled that, from the standpoint of jurists’ and legal philosophers’ linguistic uses, there are different, and even heterogeneous, kinds of interpretation-activity and, accordingly, of interpretation-outcomes. Three kinds may be singled out, in particular: (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); (c) interpretation-activities *in an improper sense*.

3. The activities of “legal interpretation” of the first kind can be regarded as activities of interpretation *in a proper sense*, because by performing them an agent can be properly said to be “interpreting the law”, as we shall see in a moment. Furthermore, they are *practically oriented*, because such an interpreting is immediately aimed at solving some “what-is-the-law?” (*quid iuris?*) practical problem. They belong, accordingly, to the sphere of ethical commitments and decision-making.

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<sup>2</sup> This distinction is a key point of Giovanni Tarello’s theory of legal interpretation: see G. Tarello, *L’interpretazione della legge*, Milano, Giuffrè, 1980, pp. 39-42. See also R. Guastini, *Rule-Scepticism Revisited*, in L. Green, B. Leiter (eds.), *Oxford Studies in philosophy of law*, vol. 1, Oxford, Oxford University Press, 2011, pp. 149 ff.

<sup>3</sup> 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” (qualification 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. On this point I will come back in § 2.

There are, in my view, two varieties of such activities: these are the activities of *textual interpretation* and *meta-textual interpretation*, respectively.

*Textual interpretation* consists in translating authoritative legal texts (“legal provisions”, “legal norms” in a pre-interpretive sense, “rule-formulations”, like, e.g., constitutional or statutory clauses) into legal norms: more precisely, into *explicit* legal norms. The outcomes of the activities of textual interpretation are *interpretive sentences*. These are sentences of the standard forms “Legal provision  $Y$  expresses the norm  $N1$ ”, “Legal provision  $Y$  means  $N1$ ”, “The meaning-content of provision  $Y$  is  $N1$ ”, where  $N1$  is a sentence that amounts to the explicit norm the interpreter presents and defends as the legally correct translation of  $Y$ <sup>4</sup>.

*Meta-textual interpretation*, contrariwise, encompasses a wide set of heterogeneous activities. These interpretive activities are *meta-textual* since they either precede, or presuppose, activities of textual interpretation. Among the several sorts of outcomes of meta-textual interpretations, to the present purpose it seems worthwhile considering the following five: (a) integration sentences, (b) institutional-status judgments, (c) gap-judgments, (d) antinomy-judgments, and, finally, (e) hierarchy-judgments.

*Integration sentences* come with the following standard form: “Implicit norm  $N_j$  (also) belongs to the normative set  $LS_i$ ” (“The norm  $N_j$  is an implicit component of the normative set  $LS_i$ ”; “The normative set  $LS_i$  also includes the implicit norm  $N_j$ ”).  $N_j$  represents a norm that is *implicit*, because (i) it is not explicit, that to say, it is not 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, e.g., analogical reasoning, reasoning *a contrario*, reasoning *a fortiori*, reasoning from the nature of things, reasoning from general or fundamental principles) to a previously identified set of explicit and/or implicit norms (positive condition)<sup>5</sup>. Integration sentences typically show up in two sorts of reasoning: (i) reasonings meant to “bringing to the light”, or “digging out”, the full components of a normative set (e.g., “the full system” of the constitutional law concerning freedom of expression); (ii) reasonings meant to fill up some previously identified gap in the law.

<sup>4</sup> On translation see, e.g., W. Haas, *The Theory of Translation*, 1962, en G. H. R. Parkinson (ed.), *The Theory of Meaning*, Oxford, Oxford University Press, 1968, pp. 86-108. On translation and legal interpretation, see the accurate review essay T. Mazzaresse, *La interpretación como traducción. Esclarecimientos de una analogía común*, en “Isonomía”, 9, 1998, pp. 73-102.

<sup>5</sup> To be sure, integration sentences come usually as part of larger discourses where reasons are offered for them. For instance, “The 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 judgments* 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, usually, in the following forms: “Provision Y is a principle-provision (i.e., it is liable to express legal principles)”, “Norm N1 is (tantamount to) a supreme constitutional principle”, “Norm N2 is a defeasible rule of conduct”, “Norm N3 is *lex specialis*”, etc. Institutional-status judgments figure out, for instance, in reasonings devoted to solving some previously identified antinomy.

*Gap-judgments* 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 a case at hand. Their standard form is: “The 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: “According to the proper textual interpretation of the set of relevant legal provisions  $LP_j$ , the case  $C_j$  is not regulated by any explicit norm”.

*Antinomy-judgments* concern the existence of some antinomy, or normative conflict, in the law. They state that there is an incompatibility between two norms that are both *prima facie* relevant to regulate a case at hand. Their standard form is: “Norm N1 is incompatible with norm N2 in relation to the case  $C_j$ ”.

*Hierarchy-judgments*, finally, concern the ranking order obtaining 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: “From the standpoint of the proper hierarchy criterion  $HC_j$ , norm N1 is superior to/inferior to/ on a par with norm N2”<sup>6</sup>. The propriety of the hierarchy criterion employed depends on the purpose in view of which the mutual ranking of two or more norms must be established.

4. 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 to the immediate purpose either of deciding some case at hand (as it betakes to judges), or of suggesting how it should be decided (as it betakes to jurists and lawyers). Rather, they aim at providing information about

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<sup>6</sup> For instance, “From the standpoint of the proper hierarchy criterion of axiological value (AV), norm P1, being a supreme fundamental principle, is superior over norm P2, which is an ordinary constitutional principle”.

the *semantic* or *hermeneutic capacity* of individual legal provisions: i.e., about the meanings they can bear. They are not, accordingly, of a practical, decision-making or ethical commitment character. Their outcomes are *conjectural sentences*. It seems worthwhile distinguishing three varieties of conjectural sentences, which correspond to as many varieties of conjectural interpretation-activity broadly conceived: (i) sentences of purely methodological conjecture (*methodological conjectural sentences*), which are the outputs of *methodological conjectural interpretation*; (ii) sentences of axiological conjecture (*axiological conjectural sentences*), which are the outputs of *axiological conjectural interpretation*; and finally (iii) *creative sentences*, which are the outputs of *creative conjectural interpretation*<sup>7</sup>.

*Methodological conjectural sentences* outline the conjectural methodological “frame of 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, canons) belonging to the methodological tradition of the relevant legal culture of the time<sup>8</sup>. Methodological sentences are the output of a complex activity having the character of a hermeneutical experiment<sup>9</sup>. On the basis of data drawn out of the legal experience, the experiment purports to investigate the hermeneutical or semantic capacity of a given provision, by means of an experimental machine consisting of a five-steps process: (1) identification of 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) identification of interpretive codes, as possible, alternative, combinations of the different methods available; (3) identification, for each of the interpretive codes previously identified, of the set of related interpretive resources: namely, of the data necessary to make the directives of the

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<sup>7</sup> “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., R. Guastini, *Rule-Scepticism Revisited*, pp. 141-142). In my view, one thing is “inventing” a new meaning for a legal provision; another thing is translating that provision by that new meaning to the practical purpose of deciding a case at hand. This is the reason why I present creative interpretation as a form of conjectural, theoretically oriented, interpretation in the proper sense.

<sup>8</sup> 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 H. Kelsen, *Reine Rechtslehre*, Wien, Deuticke, 2<sup>nd</sup> ed., 1960, ch. VIII.

<sup>9</sup> A hermeneutical experiment can be regarded as a form of mental experiment. On mental experiments, see e.g. M. Buzzoni, *Esperimento ed esperimento mentale*, Milano, Franco Angeli, 2004, in particular pp. 124-126, 265 ss. See also J. R. Brown, Y. Fehige, *Thought Experiments*, in *Stanford Encyclopedia of Philosophy*, First published Sat Dec 28, 1996; substantive revision Fri Jul 29, 2011 (<http://plato.stanford.edu/entries/thought-experiment/>).

code work, like, e.g., linguistic conventions, parliamentary reports, juristic theories about legal concepts and institutions, judicial opinions, legal principles, selected sets of norms and principles out of the macro-system of existing positive law, moral, political and legal philosophies, etc.; (4) conjectural interpretation of the legal provision according to each of the several codes and corresponding sets of interpretive resources; (5) formulation of the methodological sentence representing the final result of the previous operations, as a sentence provided with a disjunctive and hypothetical form:

“Legal provision  $LP_i$  expresses either the norm  $N1$ , if it is being interpreted according to the interpretive code  $IC1$  and interpretive resources set  $IR1$ , or, rather, the norm  $N2$ , if it is being interpreted according to the interpretive code  $IC2$  and interpretive resources set  $IR2$ , or, rather, the norm ...”<sup>10</sup>.

*Axiological conjectural sentences* outline the conjectural axiological “frame of 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 legal order, normative theories about the “proper” role of judges, etc.), which are present in the legal culture of the time, paying particular attention to those axiological outlooks that, as a matter of social fact, are dominant or influential. Methodological sentences, as we have seen, simply pay attention to methodological devices, without considering the substantial correctness, and cultural acceptability, of the interpretive outcomes they identify. Contrariwise, axiological sentences also take into account this further aspect, giving it pride of place in the inquiry. Indeed, the idea of an axiological conjectural interpretation

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<sup>10</sup> Perhaps, an example may help. Suppose the methodological tradition makes three interpretive methods available to interpreters in relation to legal provision  $LP_i$ : literal-original meaning, actual intention of the historical legislator, 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, letter-intention-coherence. To each code corresponds at least one set of interpretive resources; but, of course, it 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 resources sets. It is worthwhile 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 methodologically viable outcomes. This further condition marks axiological conjectural interpretation, as we shall see in the text, making of it a more realistic and useful enterprise.

mirrors the – in my opinion, quite sensible – view according to which, so to speak, the basic ingredients of textual interpretation are values and rhetorical arguments. Values (axiological outlooks) intervene both in the selection of the proper set of interpretive methods and in the selection of the proper arrangement of interpretive resources. The experimental machine of axiological conjectural interpretation amounts to a five-steps process as follows. (1) The first step is devoted to the identification of the axiological outlooks that are influent (be it even by a *succès de scandale*) in the legal culture of the time. (2) The second step concerns the identification of axiologically correct interpretive codes: i.e., of the codes that, according to each of the several influential axiological outlooks, interpreters should employ in order to interpret the law correctly. (3) The third step concerns the identification of the axiologically correct sets of interpretive resources corresponding to each axiologically correct code. (4) The fourth step is devoted to the conjectural interpretation of 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 the formulation of the axiological sentence that represents the final result of the previous operations. This is, again, a sentence provided with a disjunctive and hypothetical form:

“Legal provision  $LP_i$  expresses either the norm  $N1$ , if it is being interpreted according to the axiologically correct interpretive code  $ACIC1$  and the related interpretive resources set  $ACIR1$ , or, rather, the norm  $N2$ , if it is being interpreted according to the axiologically correct interpretive code  $ACIC2$  and the related interpretive resources set  $ACIR2$ , or, rather, the norm ...”<sup>11</sup>.

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; but (ii) can be identified and argued for on the grounds of some new interpretive method and a related set of interpretive resources<sup>12</sup>. The standard form of a creative sentence runs roughly as follows:

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<sup>11</sup> An example may perhaps be of some use. Suppose an interpreter discovers that there are two influential axiological outlook in society  $S$ : say, a majoritarian conception of constitutional democracy and liberal conception, respectively. 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, respectively. On this basis, she will conjecture the axiological frame of meaning of each of the several constitutional provisions.

<sup>12</sup> Suppose, for instance, an interpreter who conjectures which new meanings could constitutional provisions be translated into, if, instead of using the traditional, axiologically approved, methods

“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 the norm  $N_j$ , which represents a new meaning for it”.

5. The activities of “interpretation in an improper sense” are such that an agent who performs them, properly speaking, does not “interpret the law”. Indeed, these are activities by which somebody either describes how others have interpreted a certain piece of law, or makes predictions about how others will interpret, or, else, formulate prescriptions about how others should interpret. Following Giovanni Tarello, I will call these activities *interpretation-detection*, *interpretation-prediction*, and *interpretation-prescription*, respectively<sup>13</sup>.

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 (e.g.: “Provision Y was interpreted by Tribunal X, in judicial decision  $JD_i$ , as expressing norm  $N1$ ”). *General detection sentences*, contrariwise, purport to describe past interpretive trends (e.g.: “Until today, the appeal judges of the country always have interpreted provision Y to mean norm  $N1$ ”).

The outcome of activities of *interpretation-prediction* of legal provisions consists in *prediction sentences*. *Singular prediction sentences* predict individual acts of textual interpretation of legal provisions (e.g.: “Provision Y will probably be interpreted by Tribunal X, in his decision of the case  $C_i$ , as expressing norm  $N1$ ”). *General prediction sentences*, contrariwise, purports to predict future interpretive trends (e.g.: “In the next few years, the appeal judges of the country will probably interpret provision Y to mean norm  $N1$  in cases  $C$ ”).

Finally, the outcome of activities of *interpretation-prescription* of legal provisions consists in *prescription sentences*. *Singular prescription sentences* concern individual acts of textual interpretation (e.g.: “Provision Y is to be interpreted as expressing norm  $N1$  in deciding case  $C_i$ ”). *General prescription sentences* concern, instead, classes of interpretation acts e.g.: “Provision Y is to be interpreted as expressing norm  $N1$  in every type C case”). According to the institutional role of

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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.

<sup>13</sup> G. Tarello, *L'interpretazione della legge*, Milano, Giuffrè, 1980, ch. 2.



the interpreter, prescription sentences may have an imperative character (think at the highest court issuing any such prescription to a lower court) or, else, the character of advice or recommendation, like in the case of juristic prescription sentences<sup>14</sup>.

### 1.1. *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 at some of the kinds of interpretation-outcome I have singled out above. If I am right, they usually have in mind those interpretive-outcomes that here I have conceived as interpretive sentences and integration sentences. They seem to have in mind, accordingly, the outputs of activities of interpretation in a proper sense and practically oriented, in the textual and meta-textual varieties<sup>15</sup>. These are the items for the truth thereof they care. 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.

## 2. *Three Notions of Truth*

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<sup>14</sup> The set of notions in the text represents a radical revisitation of P. Chiassoni, *L'ineluttabile scetticismo della "Scuola genovese"*, in P. Comanducci, R. Guastini (eds.), *Analisi e diritto* 1998, Torino, Giappichelli, 1999, pp. 21 ss.; Id., *Técnicas de interpretación jurídica. Breviario para juristas*, Madrid-Barcelona-Buenos Aires, Marcial Pons, 2011, chap. II; Id., *Interpretación jurídica sin verdad*, unpublished manuscript.

<sup>15</sup> 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, 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 clear that: «According 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» (R. Dworkin, *Law's Empire*, Cambridge, Mass., London, England, The Belknap Press of Harvard University Press, 1986, p. 4-5, 225; see also Id., *Justices in Robes*, Cambridge, Mass., London, England, The Belknap Press of Harvard University Press, 2006, pp. 14-15).

In the opening passage of his farewell lecture, *What is Justice?*, Hans Kelsen recalls a scene from John's *Gospel* (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»<sup>16</sup>.

In his report of the evangelic scene, Hans Kelsen reminds us that the word "truth" can be used in many different ways. As a consequence, it would be possible to adopt, so to speak, 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 about whether interpretations can be "true" becomes the problem of whether interpretations can be "just", or "in accordance with justice". Furthermore, if, following Kelsen, we also endorse a non-objectivist and non-cognitivist meta-ethical outlook, the problem of truth in legal interpretation totally changes in character. From being, at least apparently, an epistemic problem, it turns into a practical issue: it becomes, more precisely, the problem of taking side in 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 pops out. This is the option between two varieties of alethic pluralism: austere alethic pluralism and broad alethic pluralism, as I shall call them. Austere alethic pluralism contemplates two notions of truth: empirical truth and analytic truth. Broad alethic pluralism, contrariwise, contemplates four notions of truth: indeed, besides empirical 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 aside analytic truth, we are led to

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<sup>16</sup> H. Kelsen, *What is Justice?*, in Id., *What is Justice? Justice, Law, and Politics in the Mirror of Science*, Berkeley, Los Angeles, London, University of California Press, 1957, p. 1.

contemplate three notions of truth that may seem fit for being applied in the field of legal interpretation: empirical truth, pragmatic truth, and systemic truth<sup>17</sup>.

## 2.1. Empirical Truth

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

Very roughly speaking, three kinds of discourse entities feature as being apt for empirical truth: *singular descriptive sentences, singular predictive sentences, and 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 remembering some past individual event, fact, state of affairs, behaviour, etc. They have, accordingly, a direct link with experience: they refer to singular facts or events in time and space, which have been observed or experienced by the agent who formulates them. For instance: the number of participants to the meeting *C* in  $T_i, L_i$ ; 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 Vesuvio, etc. They are true (E-true) if, and only if, things are (were) indeed as they say they are (were)<sup>18</sup>. Of course, ruling out scepticism, idealism, and post-modernism, it is assumed that things – events, states of affairs, acts, etc. – acting as truth-makers do exist independently of beliefs, preferences and interpretations of those who make descriptive sentences.

<sup>17</sup> Of course, interpretation-outcomes, as discourse entities, are apt for analytic truth and falsity, for they can be tautologous or self-contradictory. Austere alethic pluralism is the mark of logical positivism and empiricist epistemology. See, e.g., A. J. Ayer, *Language, Truth and Logic*, Second Edition, New York, Dover, 1952; G. H. von Wright, *A Treatise on Induction and Probability*, London, Routledge and Kegan Paul, 1951. On (broad) alethic pluralism, see, e.g.: N. Pedersen, Cory D. Wright, *Pluralist Theories of Truth*, in *Stanford Encyclopedia of Philosophy*, March 5, 2012 (<http://plato.stanford.edu/entries/truth-pluralist/>): «'Pluralism about truth' names the thesis that there is more than one way of being true»; N. Pedersen, Cory D. Wright, *Truth, Pluralism, Monism, Correspondence*, en N. Pedersen, Cory D. Wright (eds.), *Truth Pluralism: Current Debates*, Oxford, Oxford University Press, 2013, ch. 1; Crispin Wright, *A Pluralism of Pluralisms*, en N. Pedersen, Cory D. Wright (eds.), *Truth Pluralism: Current Debates*, cit., ch. 7; Crispin Wright, *Minimalism, Deflationism, Pragmatism, Pluralism*, en M. P. Lynch (ed.), *The Nature of Truth. Classic and Contemporary Perspectives*, Cambridge, Mass., London, England, The MIT Press, 2001, pp. 751-787; M. P. Lynch, *A Functionalist Theory of Truth*, en Id. (ed.), *The Nature of Truth. Classic and Contemporary Perspectives*, cit., pp. 723-749.

<sup>18</sup> 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*, according to the translation provided by D. Marconi, *Per la verità. Relativismo e filosofia*, Torino, Einaudi, 2007, p. 6).

*Singular predictive sentences* are the outcome of anticipatory cognitive inquiries depending upon information based on experience, according to which something will be the case<sup>19</sup>.

*Theoretical sentences*, contrariwise, include physical laws, maxims of experience, general descriptive sentences, sentences purporting to explain how complex phenomena are, etc.<sup>20</sup>. 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 mediate way on experience<sup>21</sup>.

Concerning singular descriptive sentences, empirical truth consists in the agreement, or correspondence (“fit”), between the sentence (“the words”), on the one hand, and experience (“the world”), on the other. Concerning singular predictive sentences, empirical truth consists, *ex ante* or at the moment of their formulation, in their being adequately supported by true descriptive and theoretical sentences; *ex post*, in their agreement with the way experience turned out to be<sup>22</sup>. Concerning theoretical sentences, finally, 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.

## 2.2. 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, there are *theoretical entities* belonging to the realm of empirical knowledge and scientific research. On the other hand, there

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<sup>19</sup> See G. H. von Wright, *A Treatise on Induction and Probability*, pp. 13-15.

<sup>20</sup> Physical law: “Water boils at 100°C”; experience rule: “Murderers always go back to the scene of the crime”; general descriptive sentence: “Ravens are black”; explanatory sentence for a complex phenomenon: “law is composed of norms”.

<sup>21</sup> From this perspective, then, the notion of truth as coherence and the notion of truth as correspondence do not represent the core 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. W. V. O. Quine, *Truth*, in Id., *Quiddities. An Intermittent Philosophical Dictionary*, Cambridge, Mass., London, England, The Belknap Press of Harvard University Press, 1987, pp. 212 ss.

<sup>22</sup> This is not the place to deal with the problems of “contingent futures” and the truth of predictive sentences at the moment of their issuing. J. MacFarlane, *Future Contingents and Relative Truth*, en “The Philosophical Quarterly”, 53, 2003, pp. 321-336, apparently maintains the double possibility I consider in the text. See also G. H. von Wright, *A Treatise on Induction and Probability*, pp. 13-15.

are (we may say) *practical sentences* belonging to the realm of normative ethics in the broadest sense of the phrase.

With regard to *theoretical entities*, the pragmatic notion of truth is to be located within the framework of the pragmatist theory of truth. Philosophers like Charles S. Peirce, William James, John Dewey and Ferdinand Schiller, as it is well known, originally set this forth. From the standpoint of pragmatism, empirical thesis ("claims") and scientific theories are true if, and only if, they "work" successfully as tools for improving the human condition: as pieces of information that help in bettering situations, removing obstacles, and dissipating uncertainties. The success of an empirical claim or of a scientific theory is measured against the reliability of the forecasts that it is capable to suggest to the agents in connection with their existential goals<sup>23</sup>.

With regard to *practical sentences* (norms, principles, ethical value judgments, etc.), the pragmatist notion of truth is typically related to consequentialist ethics<sup>24</sup>. Any practical sentence (a moral judgement, 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 achieving some set of goals which has been previously identified as being ethically valuable.

For instance, the singular moral judgement "It is fair to overthrow the tyrant Titus" is pragmatically true (P-true) if, and only if, by hypothesis, overthrowing the tyrant Titus will produce consequences that are ethically more favourable (valuable) than unfavourable (non-valuable) – 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 moral norm "Tyrants ought always to be overthrown" is pragmatically true (P-true) if, and only if, it is supposed that from the adoption and constant enforcement of such a norm situations will follow that will procure, for instance, the widest political freedom for the largest number of people, and it is assumed such an outcome to be

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<sup>23</sup> Following John Dewey, for instance, 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» (J. Dewey, *Reconstruction in Philosophy*, 1920, as quoted by D. Davidson, *Truth and Predication*, Cambridge-London, The Belknap Press of Harvard University Press, 2005, p. 8, note 3). See also W. James, *Pragmatism*, 1907, New York, Dover, 1995, p. 78: «The importance to human life of having true beliefs about matters of fact is a thing too notorious. We live in a world of realities that can be infinitely useful or infinitely harmful. Ideas that tell us which of them to expect count as the true ideas in all this primary sphere of verification, and the pursuit of such ideas is a primary human duty. The possession of truth, so far from being an end in itself, is only a preliminary means towards other vital satisfactions».

<sup>24</sup> On the notion of consequentialist ethics, see for instance E. Lecaldano, *Etica*, Torino, Utet, 1996, pp. 115 ss.

morally valuable and deserving to be achieved before any other. Clearly, when used in connection with practical sentences like the ones I have just considered, the pragmatist notion of truth (P-truth) favours the rational evaluation of norms and ethical-normative value judgements: i.e., their evaluation from the standpoint of instrumental, means-to-ends, rationality.

### 2.3. Systemic Truth

Systemic truth is *truth within a system*: it is, more precisely, *formal or material correctness (holistic, 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), it seems useful distinguishing, to the purpose of the present inquiry, two basic types: *deductive normative systems* and *rhetorical normative systems*, respectively.

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) where the axiomatic basis is made of normative sentences, namely, sentences representing norms that connect generic cases to normative solutions in some universe of discourse (like, e.g., “Every human being has a right to free speech”, “No search or seizure shall be allowed without a judicial warrant”, “Congress shall make no law concerning the establishment of a religion”, etc.)<sup>25</sup>.

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 inside of every deductive normative system: *original or primitive sentences* and *non-original or derivative sentences*.

*Axioms* and *transformation rules* are original sentences. They are set by stipulation: they are, accordingly, entities apt for pragmatic truth (P-true entities).

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<sup>25</sup> For this notion of a normative system I have taken inspiration from the idea of an axiomatic system set forth in C.E. Alchourrón, E. Bulygin, *Normative Systems*, Wien, Springer, 1971, ch. IV.

Non-original sentences are the derivative norms of the system; they are systemically true (S-true), if, and only if, they derive from the axioms in accordance with the transformation rules of the system. Provided axioms are syntactic entities and transformation rules are rules of deductive inference, the systemic truth of derivative sentences in deductive systems is *genetic formal correctness*, which is independent of the meaning of the expressions.

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

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

(2) where the axiomatic basis is made 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 supreme normative principles of the system (like, e.g., “Individuals have inviolable rights”, “No person shall be deprived of life, liberty, or property without due process of law”, “No religion shall be established”, “Individual privacy shall be protected”, “Each individual shall be granted a fair amount of primary goods”, etc.)<sup>26</sup>.

The distinction between *original* or *primitive sentences*, on the one side, and *non-original* or *derivative sentences*, on the other, does hold also for rhetorical systems. There are, nonetheless, a few, quite substantial, differences that mark them off from deductive systems.

(i) The *original sentences* of a rhetorical system are not norms, but norm-formulations: they are, in fact, *supreme provisions* (axioms) and *transformation-rules provisions*. I have just made clear what I mean by the supreme provisions of a rhetorical system. Coming to transformation-rules provisions, these are sentences that are assumed, by their interpreters and users, to be apt for expressing the transformation rules of the system. In turn, these are the rules that establish the criteria for identifying (what I shall call) the rhetorical consequences of the supreme provisions of the system. Notice that the identification of transformation-rules from transformation-rules provisions is necessarily entrusted to the interpreters and users of the system: indeed, no provision

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<sup>26</sup> 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”. G. W. Leibniz, *Nova methodus discendae docendae jurisprudentiae*, 1667, tr. it., *Il nuovo metodo di apprendere ed insegnare la giurisprudenza*, Milano, Giuffrè, 2012, §§ 7, 22, 23, 24, 25 (on Leibniz as a lawyer, G. Tarello, *Storia della cultura giuridica moderna. I. Assolutismo e codificazione del diritto*, Bologna, Il Mulino, 1976, pp. 133-140); H. Kelsen, *General Theory of Law and State*, Cambridge, Mass., Harvard University Press, 1945, p. 112. Both models, it goes without saying, have been stuffed with a generous and spicy dose of sceptical interpretivism.

whatever is self-interpreting. This means, in turn, first, that the transformation (translation) of transformation-provisions into transformation-rules ultimately depends on discretionary, though not necessarily arbitrary, choices by the interpreters; second, that such choices will typically be affected by practical considerations (ethical principles, concern for values and outcomes, sensibility to material interests, etc.).

(ii) 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 explicit, supreme, normative principles of the system: like, e.g., "Supreme provisions shall be construed in accordance with the conventional meaning of their expressions" " ... to nature of things", " ... as expressing a coherent set of supreme principles", "... as expressing a set of efficient, wealth-maximizing, supreme principles", " ... in accordance with their authors' original intent", etc.

*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, for instance, "Similar cases shall be treated alike", "Different cases shall be treated differently", "Norms of detail are instances of wider background principles", etc.

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 in so far as they can be presented, and justified, as the outcomes of interpretation and integration activities from previously identified provisions, explicit norms, or implicit norms.

(iii) *Non-original* or *derivative* sentences are explicit or implicit norms that represent the rhetorical consequences of the axiomatic basis of the system. It may be worthwhile emphasizing that the *non-original* or *derivative sentences* of a rhetorical system include the following five kinds of items:

1. explicit interpretation-directives and explicit integration-directives, which are as many translations (transformations, "reformulations") of transformation-rules 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 principles;



4. implicit supreme principles;

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

Supreme provisions and transformation-rules provisions are a matter of stipulation: they are stipulated by the enacting authority. Accordingly, since they are *texts* waiting for being (properly) interpreted, they are entities which are apt both for pragmatic truth (P-true), and for systemic truth (S-true), only in an indirect, mediate, way: namely, depending on the pragmatic or systemic truth of the supreme explicit principles and explicit interpretation-directives and integration-directives into which they can be translated. Pragmatic truth and systemic truth also do for implicit supreme principles and implicit norms of detail alike.

Supreme principles 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 the supreme principles, 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 by Alexy's theory of balancing).

Norms of detail are systemically true (S-true) if, but only if, they cohere with supreme principles – and other norms of details, 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: coherence as material derivation, coherence as logical consistency, coherence as instrumental adequacy, coherence as teleological adequacy, and, finally, coherence as axiological adequacy. With regard to the relationships between derivative norms of detail and supreme principles, the five notions of coherence work as follows.

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<sup>27</sup> An example (freely drawn from R. Alexy, *A Theory of Constitutional Rights*, Oxford, Oxford University Press, 2002) may help understanding what I mean in the text. Given the supreme principle “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-years term in jail”, 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-years term in jail”.

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 principle, so as to represent a *specification* or *concretization* of that principle.

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 principle.

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 by the supreme principles.

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 the supreme principles.

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 by the supreme principles<sup>28</sup>.

*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 from the meaning of the norms that are being compared.

## 2.4. Taking Stock

Having so travelled, though very quickly, through the province of truth, it is time to consider briefly what we have seen.

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<sup>28</sup> P. Chiassoni, *Técnicas de interpretación jurídica. Breviario para juristas*, cit., 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 rhetorical-normative system. Roughly on the same path as Dworkin's, Michael Lynch 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»): M. Lynch, *A Functionalist Theory of Truth*, in Id. (ed.), *The Nature of Truth*, cit., pp. 736, 737, 738. The idea that truth, in the realm of ethics, is truth “as coherence” is endorsed by Quine (W. V. O. Quine, *On the Nature of Moral Value*, 1978, in Id., *Theories and Things*, Cambridge, Mass., Harvard University Press, 1981, p. 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 ethics») and adopted by D. Dorsey, *A Coherence Theory of Truth in Ethics*, in “Philosophical Studies”, 127, 2006, pp. 493-523.

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-to-ends, rationality.

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

In the 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 may resort, instead, to such comfortable expressions like “instrumental correctness”, “material correctness”, “material coherence”, etc., 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<sup>29</sup>. In fact, any such adjudication would be 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, move to the problem from which I started.

### 3. *Which Truth in Legal Interpretation?*

Let’s 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 lay bare as a dissected flower, definitely

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<sup>29</sup> For a defence of “broad pluralism” concerning truth, on the basis of a property or function shared by the different notions, see for instance M. Lynch, *A Functional Theory of Truth*, cit., pp. 723 ss.; N. Pedersen, Cory D. Wright, *Pluralist Theories of Truth*, cit., § 4.1.

stripped out of any beauty and mystery. Let's take advantage of this painful dissection for fixing a few points.

1. Empirical truth is suitable, there seems to be no doubt as to that, to the outcomes of the activity consisting in interpretation-detection: detection sentences, whether singular or 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 both of pragmatic truth, and of 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 making; *ex post*, whenever the prediction is being confirmed by the behaviour of the interpreters it refers to (see § 2 above). It is also pragmatically true insofar as, by virtue of its presumable epistemic correctness, it is useful to obtain (what are regarded as) valuable results: like, for instance, preventing lawsuits doomed to failure, preventing unnecessary waste of resources, suggesting reasonable transactions, suggesting successful judicial strategies, etc.

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).

4. The outcomes of the activity of conjectural interpretation, in the two varieties of methodological and axiological conjecture, are, to be sure, apt for pragmatic truth. Indeed, they can be P-true sentences, insofar as the information they provide concerning the hermeneutic or semantic scope ("frame") of a legal provision is in fact useful to get to (what are being regarded as) valuable results: like, for instance, advantageous amendments to a legal text, a successful legal argumentation, a fairness-promoting judicial overruling, etc.

Are conjectural sentences also apt for empirical truth? Here I think the answer cannot be straightforward. We may 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 the basis of which the experiment has been performed must be empirically true; second, the calculations that the inquirer has performed on the basis of those data must be

exact. Accordingly, experimental truth is both a matter of agreement to experience and of reason, for calculations betake 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 call for methodical application that, from a structural point of view, is like a calculus. 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: i.e., whether they did, or did not, do any mistake in calculating the hermeneutical outputs of 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 for obtaining (what are being regarded as) valuable results: like, for instance, obtaining a momentous change in the law in force without changing the wording of its authoritative sources (the legal provisions).

6. Finally, coming to the outcomes of the activities of textual and meta-textual interpretation, surely they are apt neither for empirical truth, nor for experimental truth: being practical, decision-making, entities, which either establish what the legally right meaning of a provision is, or point at the legally correct place for a principle within the system, or set the legally proper way of filling up a gap, etc. Obviously, they are apt both for pragmatic and for systemic truth.

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

*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-judgments, gap-judgments, antinomy-judgments, or hierarchy-judgments.

*Second.* Contrariwise, if 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 while dealing with experimental truth. All these sentences however, as I have pointed out before, are either the outcomes of interpretation activities in an improper sense of the term, or, else, of interpretation activities in the proper sense of the term, but theoretically oriented (see § 1 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 meta-textual interpretation are not entities apt for empirical truth. From this perspective, accordingly, 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 to deal with the issue on the basis of the distinction between broad and austere alethic pluralism, between an inflationist and a deflationist account of truth.

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 is a notorious debate, going along since ages, about the proper way of understanding the “nature” of legal interpretation: and more precisely, in the terminology I have set forth here, the nature of textual interpretation as usually performed by judges. It is commonplace sorting out three groups of competitors in the debate: the cognitivists (“formalists”), the non-cognitivists (“sceptics”, “realists”), and the middlemen represented by moderate cognitivists.

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<sup>30</sup>.

Moderate cognitivists, by contrast, claim that there are cases where judicial interpretation of legal provisions is, and can be, a matter of objective knowledge (“easy cases”), but there are also cases where such an 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, in the forms of linguistic ambiguity and vagueness, pops out, 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 determinate; indeed, if that were not the case, natural languages would be utterly pointless as means of human communication. As a consequence, the non-cognitivists, who claim legal provisions to be radically indeterminate, are wrong<sup>31</sup>.

In this paper I have taken side with non-cognitivists. I have claimed that interpretive sentences, being the outcomes of textual interpretation of legal provisions, are never apt for empirical truth. I have done so, as you may remember, for several reasons. It is time, by way of conclusion, briefly to recall and put them in a perhaps clearer form<sup>32</sup>.

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

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<sup>30</sup> On interpretive cognitivism in Western legal thought, see e.g. P. Chiassoni, *L'indirizzo analitico nella filosofia del diritto. I. Da Bentham a Kelsen*, Torino, Giappichelli, 2009, ch. IV.

<sup>31</sup> For an accurate defence of moderate cognitivism, see G. Sucar, *Concepciones del derecho y de la verdad jurídica*, Madrid, Barcelona, Buenos Aires, Marcial Pons, 2008, ch. 1, § 2, and pp. 362-375.

<sup>32</sup> I have set forth more argument for interpretive non-cognitivism in the following papers: P. Chiassoni, *Analisi linguistica e teoria dell'interpretazione. Ancora sulla sempiterna disputa tra scettici e misti(ci)*, in J. Visconti (ed.), *Lingua e diritto. Livelli di analisi*, Milano, LED, 2010, pp. 75-96; P. Chiassoni, *La interpretación de la ley: teorías lingüísticas, juegos interpretativos, máximas griceanas*, and, *On the Wrong Track: Andrei Marmor sobre positivismo jurídico, interpretación y casos fáciles*, both published in Id., *Desencantos para abogados realistas*, D. Moreno Cruz (comp.), Bogotá, Universidad Externado de Colombia, 2012, pp. 23-66, 105-143; P. Chiassoni, *Frames of Interpretation and the Container-Retrieval View: Reflections on a Theoretical Contest*, paper presented at the XIXth IVR Congress (Belo Horizonte, July 2013).

conjectural interpretation. However, when judges say that legal provision  $LP_i$  means  $N1$  as to the regulation of case  $C_i$ , neither do they simply *detect* 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, stand for) *that* meaning as the legally correct meaning of  $LP_i$  for the purpose of deciding the case  $C_i$ .

Second, textual interpretation takes place, and is in fact a key practice, within those sophisticated, complex, tokens of rhetorical normative systems that are “our” legal systems<sup>33</sup>.

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 set of interpretive directives they have to choose and side for.

Fourth, the fact that legal provisions are sentences in a natural language does not prove, by itself, 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*).

Fifth, within sophisticated rhetorical systems like our legal systems, legal indeterminacy is not tantamount to linguistic indeterminacy: it is, in fact, methodological and axiological indeterminacy, going beyond the borders 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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<sup>33</sup> Properly speaking, our legal orders have a dual nature: they are, at the same time, both dynamic-formal systems, so far as the production of authoritative legal texts is concerned, and static-rhetorical systems, so far as the identification of explicit and implicit norms, together with their relative institutional value, is concerned. They also show up as deductive micro-systems, whenever jurists also undertake the task of systematization along with Alchourrón’s and Bulygin’s line.