Argumentation and Interpretation in Law

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This paper offers a challenge to theories of the autonomy of law, and thus by implication opposes the fashionable idea of law as 'autopoietic system'. Interpretation is, as everyone agrees, an omnipresent activity in law. But what is interpretation? According to the present view, it is a particular form of practical argumentation in law, in which one argues for a particular understanding of authoritative texts or materials as a special kind of (justifying) reason for legal decisions. Hence legal interpretation should be understood within the framework of an account of argumentation, in particular, of practical argumentation. In this framework, it turns out that

interpretation can only be a part of legal argumentation, and can only be finally elucidated within a wider view of normative constitutional and political theory, which themselves belong within a broader view of practical argumentation.

The paper proceeds from a brief elucidation of the concept 'argumentation' (1) through a more extended account of substantive reasons in pure practical argumentation (2) and of institutional argumentation applying 'authority reasons' as grounds for legal decisions (3) to an initial account of the nature and place of legal interpretative reasoning (4). Then it explores the three main categories of interpretative argument (5) linguistic arguments (A), systemic arguments (B), and teleological/deontological arguments (C); and it examines the problem of conflicts of interpretation and their resolution (6). The conclusion is that legal argumentation is only partly autonomous (7) since it has to be embedded within wider elements of practical argumentation.

1. Argumentation

Argumentation is the activity of putting arguments for or against some- thing. This can be done in speculative

or in practical contexts. In purely speculative matters, one adduces arguments for or against believing something about what is the case. In practical contexts, one adduces arguments which are either reasons for or against doing something, or reasons for or against holding an opinion about what ought to be or may be or can be done. In the present paper, I am concerned with practical argumentation and practical arguments.

2. Pure practical argumentation: Substantive reasons

If we consider what might be called pure practical argumentation, outside of any particular institutional setting, can we say anything about basic kinds of arguments it would be possible to make? The answer is almost trivial, certainly trite. There are two widely acknowledged possibilities (though later; in Section 5B I shall add a third) and these two are teleological argumentation and deontological argumentation.

A reason given for acting or not acting in a certain way may be on account of what so acting or not acting will bring about. Such is teleological reasoning. All teleological reasoning presupposes some evaluation. That bringing about x is a good reason for doing a (which will

bring about x) presupposes that x has some positive value. To the extent that judgments of value are themselves challengeable, it follows that we acknowledge some scope for axiological argumentation, giving reasons for the value ascribed to x. But some such arguments much be taken as ultimate, appealing to final values which cannot be further justified. Whether these final values are objectively or subjectively grounded, all axiological and thus also all teleological reasoning must stop at some x the value of which is just taken for granted or apprehended as self-evident.

Deontological reasoning appeals to principles of right and wrong, principles about what ought or ought not to be or be done, where these principles are themselves taken to be ultimate, not derived from some form of teleological reasoning. It is of course controversial at the deepest level in meta-ethics whether or not there are any such non-derivative principles of the right, or whether the right always depends on the good. And conversely, it can be disputed whether or not our sense of the good is (as Kant in effect argued) derived from our apprehension of what is right. But this does not have to be resolved here. For our concern is with the

phenomenology of argumentation rather than its ultimate ontology, and it is clear enough that sometimes people argue for a course of action just because it is the right thing to do regardless of consequences, that is, argue deontologically; whereas there are other occasions on which they argue for a course of action because of the value they attach to the state of affairs that way of acting will bring about, that is, argue teleologically.

Robert Summers has proposed the term 'reasons of substance' or 'substantive reasons' as a name for those reasons that have practical weight independently of authority. And he divides what I here call teleological and deontological reasons into 'goal reasons' and 'rightness reasons'. I shall follow him in the usage of the term 'substantive reason', but shall retain the more traditional philosophical terminology of 'teleology' and 'deontology' where he speaks of 'goals' and 'rightness' (Summers, 1978).

3. Institutional argumentation: Authority reasons

The above might be the only available types of pure practical argumentation, in abstraction from any institutional setting. But in fact most practical argumentation

does proceed in an institutional setting. And in such a setting it is common to make use of a different kind of reason why things ought to be (or not be) done, one to which Summers (1978) has given the name an 'authority reason'. That an action of a certain kind is required according to some ruling or command or instruction issued by somebody in an appropriate setting can count as a reason for action in compliance with this requirement. Such a reason, which is supposed to hold good as a reason by virtue of the authority of its source, is an 'authority reason'. The law is one obvious and prominent setting in which such reasons are regularly put forward in argumentation. If a legislature has enacted a requirement that (say) automobile passengers must wear seat belts, or that constitutes from the juridical point of view a reason for wearing a seat belt, or a reason why certain people may not be permitted to fish in certain waters.

Sometimes one may be inclined to think that only authority reasons are acceptable reasons in legal decision-making. The doctrines of the rule of law and the separation of powers can be understood as combining to support the thesis that those who make legal deci-

sions in litigation must only act on the basis of prior legislative decisions, and must not add anything of their own to the decisions made by the legislator.

According to most contemporary opinion, that view is too restrictive; nevertheless, some standard initial expansions of it do not greatly weaken the claim of authority reasons to be sole grounds for legal decisions. For one may expand the list of reasons operative in law to include precedent, doctrine, and custom; but is will remain the case that at any given moment of decision, the essential argument for (or against) the decision to be made is that it is required (or excluded) according to some such authoritative source.

Nevertheless it is fallacious - we could perhaps call this the 'positivistic fallacy' -to hold that arguments from authority reasons, even in a wide sense, are the only acceptable arguments in law. As we shall see, this is not true. The truth lies with a significantly weaker proposition, namely that legal argumentation can never proceed acceptably without some basis in some argument from authority. Arguments from authority have everywhere a special place in law, though not an exclusive

one. This is because it is in the very nature of law to constitute a common and authoritative set of norms for some community or group. One point of law is that, where it exists, it sets up a special sort of reasoning on practical matters. The special sort of reasoning is one which leaves aside any general and abstract deliberation on what in a given context it would be best or would be all things considered right to do or not do. Where law is appealed to, all things are not considered. Rather, the law's requirements (and, perhaps, enablements and permissions) are considered, and decision focuses on application of, or compliance with these requirements (etc.), or 'norms' more generally.

This omnipresence of authority reasons in legal argumentation is not, however, independent of substantive reasons. That which has authority is that which has a right to be obeyed; where there is authority exercised legitimately, disobedience is prima facie wrong. Notwithstanding theories of autopoiesis and self-referentiality, the reasons on which authority claims are founded cannot all be themselves authority reasons. Ultimately, to make intelligible (not to say acceptable) any claim of authority, is to enter into either deontologi-

cal reasoning or teleological reasoning, or both. Authority has to be grounded in some way on the rightness of observing norms posed or evolved in a certain way, or on the values (peace and good order, perhaps) secured by such recognition. And the justification of norms posed by authorities must presumably be in terms of their rightness (justice) or the good they bring about. Even where the rightness of using authority reasons (or the value secured by respecting them) is deemed to exclude any further appeal to substantive reasons, that in itself indicates the ultimate dependency of reasons of authority upon reasons of substance, and shows how institutional argumentation has to be anchored in pure practical argumentation. Still, the law is a forum of institutional argumentation to the extent that it gives, and necessarily gives, a central place to 'authority reasons' in the form of statutes, precedents, doctrinal materials and the like.

4. Interpretative reasoning

This leads on to the second limb of my present topic. This paper is about argumentation and interpretation. The place of interpretation is an inevitable corollary of

the place accorded to authority reasons in legal arguments. For the norm posed in an authoritative source of law has to be understood before it can be applied. Accordingly, in a wide sense of the term 'interpretation', every application of an authority reason requires some act of interpretation, since one has to form an understanding of what the authoritative text requires in order to apply it, and any act of apprehension of meaning can be said to involve interpretation. If I see a 'No Smoking' sign and put out my cigarette in response, I evince simple understanding of the sign, and compliance with it, without any element of doubt or resolution of doubt; I immediately apprehend what is required, and thus interpret the sign in this broad sense of 'interpretation'.

There is, however, a more restrictive conception of interpretation, according to which only a conscious attention to some element of doubt about meaning, followed by a resolution of that doubt, amounts to 'interpretation' as such. This reflective elimination of doubt is to be distinguished from simple unmediated understanding of a text. For example, there might be a particular occasion when I see a 'No Smoking' sign while wearing a formal dinner jacket (a 'smoking', as they call

it in French), and pause for a moment to ask myself whether the notice requires me to change into less formal attire, rather than to abstain from tobacco. To think over this doubtful point, and to resolve one's doubt by opting in a reasoned way for one rather than another view of what the text requires is to 'interpret' it this stricter sense of the term. By 'interpretation in the stricter sense', I thus mean entertaining some doubt about the meaning or proper application of some information, and forming a judgment to resolve the doubt by deciding upon some meaning which seems most reasonable in the context. Henceforward, I shall be dealing only with interpretation so understood (see Wróblewski 1985; MacCormick/Summers 1992, Chs. 2 and 8.).

It will not have escaped that this kind of interpretation is omnipresent in law. For it is frequently the case that consideration of authority reasons in legal contexts, especially contexts of law-application and legal decision-making, raises difficulties or doubts about their meaning either abstractly or for a particular context of decision, and that a judgement has to be formed to resolve the difficulties or doubts. The legal process as an adversarial process can itself generate doubts, since in a situation of

conflict of interests, each party to the conflict is anxious to find a reading of authoritative texts which supports its own favoured outcome.

This setting also makes it likely (and anyway it is always possible) that rival approaches to interpretation are themselves supported with arguments. Arguments can be, and may have to be, deployed to show reasons in favour of one's preferred interpretation, in a setting in which one's interpretative judgement is a necessary condition of the relevant applicability of a given authority reason to the decision to be taken. So not merely is interpretation relevant to argumentation, but argumentation may be relevant to interpretation. For among the arguments relevant to decision are those arguments which support or oppose a given interpretation of an authority reason deployed in support of a (possible) decision.

5. Categories of interpretative argument

The next logical stage of this paper is therefore to examine some of the kinds of arguments -interpretative arguments -that legal systems characteristically deploy in the justification of interpretations where these are

themselves reasons for decisions. In recent work, some colleagues and I have suggested a typology and systematisation of the interpretational argumentation characteristic of a wide range of contemporary systems and traditions of law. According to this, there are three main categories of interpretative argument, and within reach of these several different types of interpretative argument (MacCormick/Summers 1991, Chs. 12 & 13).

The categories of interpretative argument are, first, those that appeal to language itself as a source of reasons for favouring one interpretation or another ('linguistic' arguments); second, those that look at the legal system as the special context of the authoritative text to see how best to make sense of it in that context ('systemic' arguments); third, those that look to the end or point of the authoritative text to see how best to make sense of it given that end or point (here, for the sake of internal present consistency though departing a little from the usage in MacCormick/Summers Chapter 2, I shall refer to these as 'teleological/deontological' arguments). A further element in interpretational argument is the possibility of appeal to authorial intention as material to elucidating the meaning of the authoritative

text; but this conceals a well-known ambiguity between objective and subjective conceptions of intention, and intention may be connected to narrowly linguistic elements of semantics or syntax, to all the multifarious elements of the systemic context of a legal text, or to the aims pursued or principles upheld by the legislature either as an historic body or as an ideally rational legislator; hence this rather indeterminate element of interpretative argumentation is best considered as one ranging across the three main categories. So we call it a 'transcategorical' type of argument.

I shall now consider in the order stated some aspects of my three main categories to see what they add to the theory of argumentation.

5a. Linguistic arguments

Linguistic arguments divide into two types concerning either the ordinary meaning or the technical meaning of terms used in legal texts. For example, if a statutory provision has an obvious and intelligible meaning simply as a matter of what the interpreter takes to be the ordinary usage of the natural language employed, that is in itself a good reason for interpreting the text so as to

give effect to this 'ordinary meaning'. On the other hand, if the text is dealing with some technical subject-matter with a specialised vocabulary of its own, terms which have a technical as well as an ordinary meaning are better understood in the technical sense. For example, the word 'diligence' in 'ordinary' English means praiseworthy and careful application by a person to a task. But in Scots law, it has a technical usage, meaning a legal process for enforcing judgements; and at one time, in the terminology of transport, it meant a particular kind of horse-drawn vehicle. So in Scottish legislation about legal procedures, it should be read in its technical legal sense, and in an ancient piece of English transport legislation, it should be read as signifying the relevant sort of carriage. But in the rules of a school or university offering students prizes for special diligence, the 'ordinary' meaning should prevail.

Why do such arguments carry weight? It may be said that this is just a necessary part of respecting authority. If someone in authority issues a norm of some kind, using language to do so, one does not respect that authority unless one read the norm-text in the language and register in which it is issued. To treat a linguistically

formulated text as authoritative, one must also ascribe a kind of normative authority to the syntactic and semantic conventions of the language (whether 'ordinary' or 'technical' in which the text has been formulated). Not infrequently, appeals are made to 'intention' in such a setting -the legislature 'must be taken to have intended' the legislation to be understood in the light of its 'plain meaning' -even if there might be other reasons for favouring some other outcome than that authorised by the legislative norm-text so understood.

Behind this can be detected, perhaps, an appeal to substantive reasons at the level of pure practical argumentation. The reception of linguistic arguments could be justified on an appeal to principle; for example, the principle that language ought to be used by the legislator and understood by the citizen in a straightforward and unambiguous way. Observing this principle will prevent legislative texts being in effect given new meanings retrospectively by judges to the disadvantage of citizens and hence will uphold a more fundamental principle of justice.

An alternative line of substantive argumentation would look to the cumulative effect of a practice of relying on linguistic arguments in interpretation. By upholding 'ordinary' or respectively 'technical' meanings in disputes about the meaning of legislation, even in cases in which this brings about non-ideal outcomes, one creates a situation in which legislatures (and their draftsmen) have to take care to draft statutes in ordinarily intelligible terms, and citizens can with confidence read them in terms of plain meaning, hence the possibility of effective and trouble-free communication between legislature and citizen is maximised, and the trouble and expense of litigation about proper interpretation minimised.

In either event, it has to be recognised that behind what are often described somewhat disapprovingly as 'formalistic' or 'legalistic' approaches to interpretation there to lie substantive reasons of a perfectly respectable kind, whether be interpreted deontologically or teleologically.

5b. Systemic arguments

These are a set of arguments which work towards an acceptable under- standing of a legal text seen particularly in its context as part of a legal system. I shall mention particularly six:

(i) The argument form contextual harmonisation says that if a statutory provision belongs within a larger scheme, whether a single statue or a set of related statutes, it ought to be interpreted in the light of the whole statute or a set of related statutes, it ought to be interpreted in the light of the whole statute in which it appears, or more particularly in the light of closely related provisions of the statute or other statutes in pari materia, and that what is a more or less obvious 'ordinary', or respectively 'technical', meaning ought to be interpreted in that light.

(ii) The argument from precedent says that if a statutory provision has previously been subjected to judicial interpretation, it ought to be interpreted in conformity with the interpretation given to it by other courts. (Where there is a strict doctrine of precedent based on a hierarchy of courts, lower courts must con-

form; where particular weight is given to a jurisprudence constante of the higher courts, this would also affect the exact application of this form of argument in the system under view; in general, the argument has to be constructed appropriately to the doctrine of judicial precedent prevalent in the legal system under consideration.)

(iii) The argument from analogy says that if a statutory provision is significantly analogous with similar provisions of other statues, or a code, or another part of the code in which it appears, then even if this involves a significant extension of or departure from ordinary meaning, it may properly be interpreted so as to secure similarity of sense with the analogous provisions either considered in themselves or considered in the light of prior judicial interpretations of them. (The argument from analogy appears to be stronger on the second hypothesis, where it incorporates a version of the argument from precedent.)

(iv) Logical-conceptual argument says that that if any recognised and doctrinally elaborated general legal concept is used in the formulation of a statutory provi-

sion, it ought to be interpreted so as to maintain a consistent use of the concept throughout the system as a whole, or relevant branch or branches of it.

(v) The argument from general principles of law says that if any general principle or principles of law are applicable to the subject matter of a statutory provision, one ought to favour that interpretation of the statutory provision which is most in conformity with the general principle or principles, giving appropriate weight to the principle(s) in the light of their degree of importance both generally and in the field of law in question.

(vi) The argument from history says that if a statute or group of statutes has over time come to be interpreted in accordance with an historically evolved understanding of the point and purpose of the statute or group of statutes taken as a whole, or an historically evolved under- standing of the conception of rightness it embodies, then any provision of the statute or group of statutes ought to be interpreted so that its application in concrete cases is compatible with this historically evolved understanding of point and purpose or of rightness.

All these arguments are well-known to lawyers and, I suppose, easily recognisable even without weighing the present essay down with illustrations and examples. What is of importance in the present context is to ask why such arguments carry the weight they obviously do in contemporary legal systems. A part of the answer simply relates back to the linguistic arguments. No linguistic communication is fully comprehensible save in a whole presupposed context of utterance. All legal materials are uttered in the context of the legal system in general, and in the light no doubt of a whole complex of concrete legal, political and factual circumstances. So interpretation cannot be satisfactorily carried through even in a purely linguistic sense unless the whole context is kept in mind.

But that is not the whole story, for it fails to say just why the legal context gives special appropriateness to arguments stressing the six features I have mentioned. As to that, I think it is necessary to draw attention to an ideal of overall coherence which governs our view of the legal system as a system and hence gives weight to the interpretative approach favoured by our various types of systemic argument. This is a theme

which I have explored at some length elsewhere, and on which Ronald Dworkin has had much to say lately in commending an ideal of 'integrity' in a legal system. The point is that legal systems do not contain single or isolated commitments of principle or determinations of policy. Rather, they comprise a multiplicity of interacting norms of many kinds, and these may be taken to express a plurality of principles and policy-choices. As such, they are capable of being handled in a way that tries to make as much sense as possible of the whole taken together and taken as a whole (MacCormick, 1984; Dworkin, 1986).

If one were to reject the attempt to view law holistically as a coherent system, each decision would presumably have to be considered as taken on its own merits with regard to any attractive interpretation of norms relevant to the instant case. In an extreme, the law would then approximate to the poet's wilderness of single instances. By contrast, a practice of construing the law so as to give it coherence in form and content is one which actually constructs and reconstructs law into an ordered scheme of intelligibly differentiated cases and situations.

In interpretative dilemmas, recourse to systemic argumentation exhibits a special regard for this overall quality of rational coherence and intelligibility in law. It involves superimposing a principle of rationality on the institutional actuality of law. As such, it adds a missing element to our two substantive arguments as elements of pure practical argumentation. The argument from coherence is a necessary supplement to teleological argument and deontological argument for any setting in which it is envisaged that there is good reason to have recourse to a plurality of norms all together, not just to isolated moment-by-moment aims or principles.

5c. Teleological/deontological arguments

These arguments contextually replicate what I have in this paper characterised as the two forms of substantive argumentation, the arguments which would .be available in a context-free realm of pure practical argumentation. But of course in the legal context they remain in an important way institutional arguments, not free-floating arguments of pure practical reasonableness.

Teleological interpretative argument concerns the end or purpose imputed to a piece of legislation on the

assumption of its having been enacted by a rational legislature in a given historical setting. Whether one expresses this in negative terms as a matter of the 'mischief' or undesirable state of affairs the legislature was (or was presumptively) trying to remedy, or positively in terms of some supposedly good state of affairs imputed as the end and aim of the act of legislating, the idea is that of treating legislation as a teleological enterprise where the telos or aim is independent of the terms of the text enacted and hence can provide a guide to their interpretation: So interpret as to help realise the imputed purpose; do not so interpret as to defeat that purpose. For example, if a tax statute contains a section on penalties for non-disclosure of earnings, impute to the legislature the purpose of establishing a fair and rational scheme of dis- incentives to non-disclosure. Then interpret the penal provisions in the statute so as to bring about fairness and rationality, even at the expense of a literal reading of the terms of the act in their ordinary meaning. Do not read the act - even in its 'ordinary meaning' -so as to defeat the presumed aim of its penal provisions (Hinchy, 1959).

Deontological interpretative argument is argument in terms of principles of rectitude or justice which in the interpreter's view ought to be observed in respect of a given situation or subject matter. Intention to act justly can always be imputed to a legislature considered as an ideally rational law-making body, and particular concrete conceptions of justice are often reasonably imputable to actual historically situated legislatures. For example, the principles imputed to the Rome Treaties and associated acts foundational of the European Community allow for the 'four freedoms' to be enjoyed throughout the Community by all citizens of all member states. Hence legislation by a member state which seeks to protect coastal fisheries by restricting fishing rights to its own nationals cannot be compatible with the treaties on any reasonable interpretation, nor should the quota provisions of the Common Fisheries Policy be interpreted as creating an exception to the fundamental principle of freedom of establishment (Factortame, 1991).

The connection between such interpretative arguments and pure practical argumentation is obvious enough. For these are simply institutional applications of the two basic forms of practical argument. But they

are restricted by the institutional setting. For the question must always be as to telos or principle in relation to the statute or other text as one finds it, and with some regard to its historical and systemic context. For any given problem situation, we can always differentiate the question 'What would be the best aim to pursue here, or the best principle to apply?' from the question 'What aim is it plausible to ascribe to the legal text before use, or the best principle to frame as expressing to underlying point?' The latter are the true questions of interpretation, whether or not legal decision makers are also entitled to have some regard to the former in the setting of adjudication. (And I am by no means sure that Ronald Dworkin (1986) does not conflate them in advancing this theory of 'constructive interpretation', though that is another story.)

The institutional setting exerts other pressures here. Especially in the case of statutory texts recently enacted by a democratic legislature, the weight of the practical principles favouring linguistic interpretation will place limits on the propriety of effectively rewriting the law to match imputed purposes or commitments of principle only implicitly to be found in the text as enact-

ed. And the principle of rationality noted above favours systemic coherence over momentary aim or isolated principle.

6. Conflicting arguments and conflict-resolution

From all the above, it is only too clear that interpretative argument in law presents considerable complexity, since there are many types of argument available, and each is capable of generating an interpretation of a given text at variance with that generated by some other possible argument. Indeed for any set of rival interpretations. I_1, I_2 ... I_n, if these were seriously viable rivals at all, there would be some arguments of one or another of these types (or perhaps others similar) to support one or another of the rival interpretations. Nor is there any reason to suppose that arguments of different types within the same category must all tell in the same direction; of course not, for there can be intra-categorial conflicts of argument as well as conflicts between (or in some cases convergence of) arguments of different categories. Hence there must be a stage of argumentation which concerns the ranking of arguments or cumulative sets of

arguments when there is conflict among the interpretations these generate.

As for this one can certainly suggest relatively simple models for ordering and ranking possible arguments. It is tempting to suggest that in all systems there is a tendency to start out with the linguistic arguments, then to proceed to systemic, and only to have recourse to teleological/ deontological argumentation when arguments of the other sorts remain problematic. A relevant doctrine of positive law in this context is provided by what Scottish and English lawyers call 'The Golden Rule'. Here is a classical formulation:

[*W]e are to take the whole statute together and construe it altogether, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity, or inconvenience so great as to convince the court that the intention could not have been to use them in their ordinary signification, and to justify the court in putting on them some other signification which, though less proper, is one which the court thinks that the words will bear.* (Lord Blackburn, in *Weger v. Commissioners Adamson*; [1874-78] All ER Rep. 1,

at 12)

And here is a relatively more recent formulation:

[*O]ne is to apply statutory words and phrases according to their natural and ordinary meaning without addition or subtraction, unless that meaning produces injustice, absurdity, anomaly, contradiction, in which case one may modify the natural and ordinary meaning so as to obviate such injustice etc. but no further. (Nowadays we should add to 'natural and ordinary meaning' the words 'in their context and according to the appropriate linguistic register'.)* (Lord Simon, in *Stock v. Frank Jones (Tipton)*; [1978] 1 All ER 948, at 952)

As these dicta suggest, if there is one interpretation that is clearly favoured by a reading of the text in the light of syntactic and semantic conventions of ordinary language (or special registers in special settings), and if this is confirmed by a reading of the text in its whole systemic context, there is no need for recourse to teleological/deontological arguments. But if there remains uncertainty in the light of all the linguistic and systemic arguments, further grounds of interpretation are required, or if there is an 'absurdity' of some sort,

that should be resolved. A valuable recent study by Dr. Yezhar Tal (1992) stresses, contrary to much that has been said in a doctrinal literature, that both in practice and in authoritative rulings about interpretation 'absurdity' for the purpose of the Golden Rule includes conflict either with justice or with other aspects of what is deemed the public good. The present paper owes much to Tal's work. It is in the relevant sense 'absurd' to read a statute either in such a way as to generate injustice by reference to some legally recognised principle f justice or in such a way to be self-defeating in terms of presumed objectives of public policy pursued through legislation. So it would not be correct to say that the category of teleological/deontological argument comes into play only if the other two categories fail to yield an unequivocal result. Consideration of arguments in that category may show up such an absurdity as will displace a *prima facie* binding conclusion about the meaning of the legislative words in their (fully contextualised) 'ordinary signification'.

Interesting and suggestive though the Golden Rule is, however, it is not really a 'rule'. It is better considered as a maxim of practical interpretative wisdom, indicating

how the various type of argument may be handled in cases of real interpretative difficulty arising from conflicts among relevant arguments. It does not provide any simple binary directive about right and wrong interpretations in the difficult cases. It indicates an approach to the resolution of difficulty.

7. Conclusion: Interpretation within practical argumentation

In understanding such difficulty and its resolution, we need to reflect further on the values and principles I have suggested as underlying each of the categories of argument. Behind linguistic interpretation lies an aim of preserving clarity and accuracy in legislative language and a principle of justice that forbids retrospective judicial rewriting of the legislature's chosen words; behind systemic interpretation lies a principle of rationality grounded in the value of coherence and integrity in a legal system; behind teleological/deontological interpretation lies respect for the demand of practical reason that human activity be guided either by some sense of values to be realised by action or by principles to be observed in it. But in the case of this last most funda-

mental level of practical argumentation, the perennial problem of the human situation is the interpersonal disputability of the values and principles that should guide us. As is commonly held, a strong justifying reason for the maintenance of legal and other common social institutions among humans is to diminish the scope for disputes about governing values and principles in the social arena. And this is what in turn justifies giving considerable weight to linguistic and systemic argumentation in law, and imposing rather heavy threshold constraints against too ready recourse to teleological/deontological argumentation to raise, and sometimes to resolve, interpretative difficulties in law.

These remarks cannot be uncontroversial, since they themselves take a practically argumentative position about the right way to understand, to justify, and to use legal and related institutions in democratic societies. They show that one cannot confine argumentation about law to purely interpretative argumentation. Law may indeed be an 'interpretive concept' (Dworkin, 1986), but in forming a view about law and its interpretation, we must do more than interpret the concept of law and the texts that belong to what we conceptualise

as law. We move in the end into a broader sphere of practical argumentation. Here, we must reflect on the values and principles appropriate to the institutions of the societies, the states and the supranational and international communities which we inhabit. We need to think about the meaning of constitutionalism or *Rechtsstaatlichkeit*, democracy, the rule of law, the separation of powers, procedural justice, equality before and under law, human rights and the integrity of public offices. All these, and more besides, come into play when we seek a fully explained and justified view of the best approach to legal interpretation in trouble cases.

In short, the theory of interpretation as a topic intrinsic to the study of practical argumentation leads on necessarily on into the deepest waters of normative constitutional and political theory, that is, to quite free-ranging practical argumentation applied to basic legal and political institutions. In that light, it is not surprising if a short paper on argumentation and interpretation in law offers suggestions rather than conclusions about the best approach to the resolution of interpretative difficulties in law. But it does enable us to say that even if

law can effectually regulate its own creation, it can never completely regulate its own interpretation.

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