Damiano Canale e Giovanni Tuzet

Interpretive Scorekeeping

Caminante, son tus huellas
el camino, y nada más;
caminante, no hay camino,
se hace camino al andar.
(Antonio Machado)

According to the Italian law, having acted for petty motives constitutes an aggravating circumstance of an offense. We sketch in this paper two interpretive accounts of what the legal expression 'petty motives' means: one according to the standard semantic explanation of content, the other according to an inferential explanation of content. Such an inferential explanation is based on a pragmatic account of semantics and a deontic scorekeeping model of interpretation inspired by the philosophical work of Robert Brandom. The resulting model of legal interpretation is what we call "Interpretive Scorekeeping".

We start by briefly considering in Section 1 the semantics/pragmatics debate in contemporary philosophy of language and relatively to legal interpretation. Then we sketch in Section 2 a semantic explanation of the expression 'petty motives'. In Section 3 we consider the articulation between a pragmatics of semantic content and an inferentialist conception of content. Then in Section 4 we sketch an inferential explanation of the expression 'petty motives'. Finally, we consider in Sections 5 and 6 some possible advantages and drawbacks of Inferentialism applied to legal interpretation and adjudication.

1. *The Semantics/Pragmatics Distinction*

One of the most interesting topics of contemporary philosophy of language concerns the relation between semantics and pragmatics, and the attempt to redefine it[1].

[1] See *e.g.* Bianchi 2004, Bach 1999. See also Récanati 1993: 260 ff.

Since the theoretical framework outlined by Charles Morris and Rudolf Carnap in the middle of the 20th century, we usually split up the study of language into three main fields and subjects: syntax, semantics and pragmatics[2]. According to this framework, *syntax* deals with the study of the relations between expressions; *semantics* with the study of meaning (the relations between expressions and what they stand for); and *pragmatics* with the study of the relations between expressions and those who use them in communicating the content of mental states as beliefs, desires, intentions, etc.

Such a distinction is still generally accepted not only in linguistics but also in legal theory. The claim is generally accepted that there are syntactic, semantic and pragmatic problems in legal interpretation, together with the claim that each of them has its own solutions which are relatively independent from the others'.

A typical example of this approach is given by the standard account of the problem of ambiguity in legal interpretation[3]. According to such an account, there are cases of *syntactic* ambiguity, in which the logical connection between the terms of a sentence is not straightforward. Consider the legal sentence 'Men and women which are 60 years old can request the social security pension'. It is not straightforward whether the expression 'which are 60 years old' refers solely to 'women' or to both 'women' and 'men'. Besides, according to the standard approach, there are cases of *semantic* ambiguity, in which the meaning of a general term is not straightforwardly determined. The interpretation of the legal sentence 'The President of the Italian Republic may nominate five life senators' must determine which is the property expressed by the general term 'President': is it the property instantiated by a person or the one instantiated by an organ? Finally, according to the standard approach, there are cases of *pragmatic* ambiguity, concerning the kind of speech act performed by the utterance of the sentence. For example, the legal sentence 'The administrator takes part to the shareholders' meeting' can be used to express an imperative norm, a permission, or a constitutive norm. In each of these cases respectively, the legal sentence expresses a different normative content. These and other classifications of various problems in legal interpretation follow right from the triadic division of the theoretical understanding of language mentioned above.

Nevertheless, the traditional boundaries between syntax, semantics and pragmatics have been challenged by philosophers as Wittgenstein, Austin, Sellars, provoking a general drift to a "pragmatization of semantics" (Peregrin 1999:

[2] See Morris 1938, Carnap 1939. Remember, however, that the distinction has distinguished ancestors. Consider the Medieval classification (*Trivium*) according to which *Grammar* teaches how to speak correctly, *Logic* how to speak truly and *Rhetoric* how to speak elegantly (cf. Moody 1953).

[3] We take the following examples from Guastini 1993: 351-355. On ambiguity cf. *e.g.* Atlas 1989, Chap. 2.

420)[4]. Their approach, even though for different reasons and to different extents, is based on a different conception of language and semantics, namely on seeing the terms and the expressions rather as tools used in a practice than as signs which stand for something else. From this angle "it seems that it must be pragmatics, as the theory of how people use linguistic signs, rather than semantics, which should be the heart of a theory of language" (Peregrin 1999: 425). In this sense the semantic content of a linguistic expression can find only a pragmatic explanation. At the same time, if legal language is an aspect of human action, legal interpretation cannot be seen as a means to fix the relation between signs and what they stand for (objects, states of affairs, events, mental states, ideal entities), but as an aspect of the legal practice which aims to clarify the relation between different linguistic actions. The "semantic content" of a legal sentence, as conceived in the standard account, is *never* sufficient to determine what the sentence really means[5]. By consequence, what a general term stands for in the legal practice is always determined by the linguistic interaction performed by the participants in the practice[6]. This is the case for two reasons at least. First, it is a result of the great variability of the contextual background of legal action and interpretation. There is not a unique set of conditions of significance for a legal sentence and, at the same time, there is not a unique criterion which identifies the conditions of variability of such a set. The *way* of contextual dependence of semantic determination depends upon the context itself[7]. Secondly, the participants in a linguistic practice have different masteries and propositional attitudes their use of language depends on. What we call a "correct" application of a concept is

[4] The drift to a "pragmatization of semantics" was provoked by the internal development of the traditional triadic schema as well. The direction pointed out by Carnap in intensional logic (Carnap 1956), with the attempt to develop a formal semantics of natural language (Montague 1974), has leaded to consider some kinds of terms and expressions that do not support a context-independent analysis. This is the case of indexicals, pronouns and articles. What these kinds of terms stand for depends on some aspects of the speech context: their meaning (semantic content) is a function which yields a denotation only when applied to a context.

[5] Cf. Searle 1980: 221-231; Travis 1997. See also our Section 3.

[6] In this sense, pragmatics is not an attempt to fill the gap between the conventional meaning of a legal sentence and what is being communicated (Grice 1957), seen as the intention of the "fictitious author" of the sentence (Marmor 2005: 25). Pragmatics is rather an attempt to explain what a sentence means analyzing the use the practitioners make of it in linguistic interaction.

[7] See Bianchi 2002: 262-263. Robert Brandom (1994: 144) points out that "it is pointless to attribute semantic structure or content that does no pragmatic explanatory work. It is only insofar as it is appealed to in explaining the circumstances under which judgements and inferences are properly made and the proper consequences of doing so that something associated by the theorist with interpreted states or expressions qualifies as a *semantic* interpretant, or deserves to be called a theoretical concept of *content*".

neither a presupposition of the legal practice shared by the participants, nor a simple result of the practice itself: the very criteria of correctness in using language depend on the pragmatic interaction of the participants[8].

2. *'Petty motives': A Semantic Explanation*

In order to make clear the preceding theoretical assumptions, it is useful giving an example of semantic explanation of conceptual content in legal interpretation, and then comparing it with a pragmatic one. Take article 61 of the Italian Criminal Code: "The following circumstances shall aggravate an offense … : (1) having acted for base or petty motives … ". The expression 'petty motives' seems to be a typical example of semantic vagueness: the circumstances the expression is referring to are not straightforwardly determined. That is quite clear if we take into account the following case[9]. Perry has killed Terry with a gunshot after a quarrel in a night-club. During the quarrel Terry wounded Perry's arm with a stick. Then Perry got out the night-club, took a gun from his car and came back into the night-club where he shot Terry, who died through the fatal injury. Is the arm wound provoked to Perry a petty motive for killing Terry? In logical terms, is the circumstance of an arm wound denoted by the legal expression 'petty motives'? If the answer is dubious, we face a problem of semantic vagueness (see *e.g.* Endicott 2000). How does the judge determine the semantic content of the legal expression 'petty motives' relatively to this case? Contemporary legal theory gives two different answers to the question, which can be called externalist and internalist respectively.

From an *externalist* point of view in legal interpretation, the reference of a legal expression determines his meaning. That is possible if we treat the expression 'petty motives' as a natural-kind predicate. In Putnam's opinion (1975,

[8] See Quine 1960: 128-130. Dennis Patterson (2004: 246) has rightly argued that "concept possession is the demonstrated ability to participate in the manifold activities in which the concept is employed … It is only when we master the techniques employed by participants in a practice that we can grasp the distinction between correct and incorrect action". This approach, which claims the priority of understanding over interpretation, gives a persuasive account of what is a practical attitude in using language. Nevertheless it seems to be incomplete. It does not explain how the participants can share the *same* mastery in a practice, or rather how a legal sentence can be understood if the participants do not share the same "grammar" – in Wittgenstein's sense. On this point cf. Forster 2004. Such an issue makes more difficult to distinguish understanding from interpretation and can justify the interpretive approach to understanding developed by Donald Davidson and Robert Brandom.

[9] We elaborate for our purposes a real case of murder happened in Italy, on February 2003, which has been known as "Omicidio della Magliana".

Chap. 12) it is the real nature of the entities designated by natural-kind predicates that determines their meaning. Of course our accounts of the nature of such entities are empirically defeasible: future investigation might reverse even our most "certain" accounts. However the meaning of a natural-kind predicate does not depend on the account we give of it, but on the very nature of his reference. If it is possible to treat concept-words like 'justice', 'liberty', 'malice', 'petty motives' as natural-kind words like 'gold' or 'water'[10], we can overcome the vagueness of the expression 'petty motives' considering the real nature of the circumstances the legal sentence is there to settle.

From an *internalist* point of view in legal interpretation, on the contrary, the meaning of a legal expression determines his reference by virtue of a discretionary decision of the judge, which fixes the conceptual content of the expression and can be justified by means of different interpretive arguments (analogy, principles, moral arguments). In the light of an internalist explanation of semantic content, the judge determines whether the legal expression 'petty motives' denotes the circumstance of an arm wound on the basis of the uses of the expression given in a linguistic community. The different versions of the internalist point of view differ as to the extension of vagueness in the law, the nature of discretionary power of the interpreter and the way of his justification[11]. They do not differ, however, on the explanation of conceptual content in legal interpretation.

Although those two points of view rely on quite different conceptions of law, legal language and legal interpretation, they share the same conception of semantics: they see legal expressions as signs which stand for something else rather as tools used in a practice. Is this the best way to develop a theory of legal interpretation? We suspect that such points of view are in any case incomplete, for they do not take into account the pragmatic interaction between the speakers which governs the process of semantic determination.

3. *Pragmatics of Semantic Content and Inferentialism*

It is possible to adopt a different strategy to analyze the issue of semantic determination: developing a pragmatic explanation of the semantic content of legal sentences.

In order to develop an explanation of this kind, it is necessary to consider as basic unit of meaning not the sentence, but the relations among sentences. This way has been taken, in particular, by Wilfrid Sellars and Robert Brandom. Sel-

[10] See for example Moore 1985: 290 ff. For a critical discussion of Moore's natural law thesis, see Marmor 2005: 106 ff. (As to the application of theories of reference to legal interpretation, see also Brink 1988, Moore 1989, Stavropoulos 1996).
[11] Cf. *e.g.* Bix 1993, Patterson 1996.

lars claims that the meaning of a concept is determined by the set of material inferences which make use of it in linguistic exchange: conceptual contents are inferential roles, and the inferences which matter for such contents include those that are materially correct, that is to say the inferences whose correctness is an aspect of grasping or mastering those concepts[12]. So, to determine the conceptual content of the expression 'petty motives' we should analyze those inferences in which the expression is used and which the speakers treat as correct[13].

Brandom makes a further step. The inferential relations among sentences are considered under a strictly pragmatic point of view. Any assertion or prescription can be seen as a speech act committing the speaker to a determinate set of inferences, a commitment instituted by the participants in a legal practice attributing to each other such a status. If the commitment undertaken in making the assertion '*p*' or the prescription '*q*' is discursively fulfilled, so that the speaker is entitled by the others to assert *p* or to prescribe *q*, the inferences used are taken as valid from an intersubjective point of view, determining, in case of a legal rule, the semantic content of the rule so stated. In particular, the structure of the pragmatic interaction attributing commitments and entitlements is described by Brandom through a deontic scorekeeping model of semantic determination. Competent practitioners keep track of their own and each other's linguistic actions: they "keep score" of commitments and entitlements by attributing those deontic statuses to others and undertaking them themselves[14]. The score is fixed from the point of view of each of the participants, and not from outside the practice. By virtue of this model, the significance of a concept, that is the set of the correct inferences it can be involved in, is instituted by the practice consisting in keeping score of discursive duties (commitments) and authorities (entitlements)

[12] Sellars 1953. On this point see also Brandom 1994: 97-107. The notion of material inference is taken to be different from the standard notion of logical inference (but the issue is controversial). The inference from 'Rome is to the North of Naples' to 'Naples is to the South of Rome' is an example of material inference according to Sellars and Brandom, for its correctness does not depend on a logical rule but on the competence of the speakers.

[13] A analogous example is presented by Jules Coleman (2001: 7): "Suppose … that I say to Smith 'I promise to meet you for lunch today'. Understanding this as a *promise* means knowing that it warrants a variety of inferences – for example, that I predict I will show up for lunch; that I have a duty to show up; that Smith has a right that I show up; and so on. The content of the concept 'promise' is revealed in the range of inferences warranted by the belief that a promise has been made; and to grasp the concept of a promise is to be able to project the inferences it warrants".

[14] "The significance of a performance is the difference it makes in deontic score – that is, the way in which it changes what commitments and entitlements the practitioners, including the performer, attribute to each other and acquire, acknowledge, or undertake themselves" (Brandom 1994: 166). Cf. Brandom 2000: 173 ff.

of the participants in the practice[15].

Once this point of view is assumed, what about legal interpretation? Legal interpretation ceases to have the semantic content of legal sentences as subject-matter and its determination as goal. The subject-matter of legal interpretation, instead, are the relations among the deontic statuses expressing the condition of significance of a legal sentence, while its goal consists in determining the inferences that can be treated as correct in the context of decision-making, by virtue of a deontic scorekeeping of the assertional and prescriptional contributions of the participants in the discursive practice.

4. *'Petty motives': An Inferential Explanation*

That being said, it is possible to give an example of an inferential explanation of conceptual content in legal interpretation, referring to the case presented above. We sketch in this Section the pragmatic interaction between the prosecuting attorney (P), the lawyer (L) and the judge (J) during the trial concerning Terry's murder.

(P1) 'Since Perry killed Terry for petty motives, Perry ought to be punished for aggravated murder'.

Through speech act P1, P undertakes 4 different commitments (*C*) from the point of view of L and J:

(*C1*) 'Perry killed Terry'
(*C2*) 'The motive of the killing was petty'
(*C3*) 'Perry ought to be punished for murder'
(*C4*) 'The punishment ought to be aggravate'.

In countering P, L says:

(L1) 'Since Perry killed Terry not for petty motives, Perry ought not to be punished for aggravated murder'.

[15] Why speak of *deontic* scorekeeping? From a philosophical point of view, one could object that the norms governing a language game express oughts-to-be rather than oughts-to-do (the idea is, to put it differently, that they are constitutive and not regulative rules). In reply, one could claim that at least in institutional contexts (like the legal one) the oughts expressed are oughts-to-do and the moves in the language game are actions answering to them. For a more articulated discussion on the application of Brandom's scorekeeping model to legal interpretation see Canale 2003: 179 ff. On the application of this model to legal argumentation see Klatt 2004.

Performing speech act L1, L acknowledges 2 entitlements (*E*) to P from his point of view and the point of view of J:

(*E1*) 'Perry killed Terry'
(*E2*) 'Perry ought to be punished for murder'.

As we have underlined above, in Brandom's scorekeeping model every participant to the linguistic practice keeps score of the points he makes and he attributes to the others. By means of *E1* and *E2*, therefore, P scores two points within the pragmatic interaction of the speakers. Those assertional and prescriptional contributions to the linguistic game are acknowledged by L as correct. (So, by now, P has scored two points and L zero points).

But L, by means of speech act L1, undertakes two further commitments, which are in conflict with *C2* and *C4*:

(*C5*) 'The motive of the killing was not petty'
(*C6*) 'The punishment of Perry ought not to be aggravate'.

Because of such a conflict, P or J can request L to fulfill *C5* and *C6* by means of a new speech act:

(L2) 'Since Terry wounded Perry's arm with a stick, the motive of the killing was not petty and the punishment ought not to be aggravate'.

Through speech act L2, L undertakes two further commitments from the point of view of P and J:

(*C7*) 'Terry wounded Perry's arm with a stick'
(*C8*) 'Such arm wound was not a petty motive for killing Terry'.

At this point of the pragmatic interaction, imagine that P performs a new speech act in answering to L:

(P2) 'Since Terry wounded Perry's arm with a stick and the wound was not serious, the motive of the killing was petty and the punishment ought to be aggravate'[16].

[16] For analytic purposes, it could be remarked that the motive of the murder was not the arm wound itself, but the mental state of Perry who had some desire of revenge or else provoked by the arm wound.

In performing such a speech act, on the one hand P entitles L to assert *C7*; L makes one point from his point of view and the point of view of P and J:

(*E3*) 'Terry wounded Perry's arm with a stick'.

(So P has scored two points and L one point). On the other hand, P challenges L's title to assert *C8* and to prescribe *C6*, undertaking a new inferential commitment:

(*C9*) 'Such arm wound was a petty motive for killing Terry'.

Because of the conflict between *C9* and *C8*, P can be requested by L or J to fulfill such a commitment by means of a new speech act:

(P3) 'Since Perry's wound was not serious, his reaction was not proportioned to the injury provoked by Terry'.

The new commitments undertaken by performing P3 are:

(*C10*) 'Perry's wound was not serious'
(*C11*) 'Perry's reaction was not proportioned to the injury provoked by Terry'.

L's reply could be the following:

(L3) 'Although Perry's wound was not serious, he had been humiliated by Terry and then, since his reaction was provoked by Terry's offense, the motive of the killing was not petty'.

By performing L3, L entitles P to assert *C10*. P scores a further point from the point of view of L and J. (So, by now, P has made three points and L one point). At the same time, however, L does not entitle P to assert *C11* and undertakes two new commitments in countering P:

(*C12*) 'Perry had been humiliated by Terry'
(*C13*) 'Perry's reaction was provoked by Terry's offense'.

At this new level of the pragmatic interaction, therefore, P and L propose two different meanings (conceptual contents) of the expression 'petty motives', that is to say, in Brandom's words, two different sets of inferences the expression can be involved in. From P's point of view, the content of the legal expression 'petty motives' is composed by some inferences like the one from 'Perry's wound was not serious' to 'Such arm wound was a petty motive for killing Terry'. From L's point of view, on the contrary, the content of the same expression is composed by some inferences like the one from ‘Perry had been humiliated by Terry’ to ‘The motive of the killing was not petty’[17]. Now, in an interpretive scorekeeping model, if the inferential commitments of a speaker conflict with the inferential commitments of another speaker, so that neither is entitled to assert *p* or to prescribe *q*, ‘*p*’ and ‘*q*’ are not straightforwardly determined. In the case we are considering, the meaning of the expression ‘petty motives’ is vague[18].

The momentary conclusion of such an exchange of reasons is the decision of J, who keeps score of the inferences which he takes to be pragmatically correct comparing the statements of P and L. The result of the judge’s interpretive scorekeeping will determine the semantic content of the expression ‘petty motives’ relatively to the concrete case:

(J1) ‘Since Terry wounded Perry’s arm with a stick, and Perry reacted murdering Terry, and Perry’s wound was not serious so that his reaction was not proportioned to the injury provoked by Terry, Perry killed Terry for petty motives, and Perry ought to be punished for aggravate murder’.

By means of J1, on the one hand J does not entitle L to assert *C12* and *C13* and to prescribe *C6*; on the other hand J entitles P to assert *C10* and *C11* and to prescribe *C4*:

(*E4*) ‘Perry’s wound was not serious’
(*E5*) ‘Perry’s reaction was not proportioned to the injury provoked by Terry’
(*E6*) ‘The punishment of Perry ought to be aggravate’.

By means of such entitlements, P scores three points from the point of view of all the participants. (So P has made six points and L one point). Then P “wins” the trial. In a calculation of the points made by P and L during the trial, P scores the best result. At the same time J’s interpretive scorekeeping fixes the semantic content of the legal expression ‘petty motives’ acknowledging the inferences proposed by P and rejecting the inferences proposed by L. In the light of a scorekeeping model of legal interpretation, therefore, the semantic content of a legal expression is determined neither by the real nature of the circumstances the expression is referring to (externalism), nor by a pure discretional judgement which determines the reference of the expression (internalism). The semantic content of

[17] To put it differently, P and L follow different rules in using the expression ‘petty motives’. This could be the conditional expressing P’s rule: ‘If Perry’s wound was not serious, then the motive of the killing was petty’. This could be the conditional expressing L’s rule: ‘If Perry had been humiliated by Terry, then the motive of the killing was not petty’.

[18] Notice that, in this sense, vagueness is not a presupposition but a result of the pragmatic interaction.

a legal expression is described as a set of inferences which the participants in a linguistic practice make explicit by means of their speech acts. Such a determination is the result of an interpretive scorekeeping of the entitlements assumed in asserting *p* and prescribing *q*. J's judgment is not arbitrary because J keeps track of the points that the participants attribute one another. However his interpretive scorekeeping is still disputable. L could challenge *E4*, *E5* and *E6*, treating them as commitments which have not been fulfilled in the trial. This is the case when L appeals J's decision. In the appeal, he starts a new exchange of reasons and J's decision might be modified attributing a different semantic content to the expression 'petty motives'.

Focusing on the judicial decision, it is to be noted that its authoritative character may yield some pragmatic conceptions of legal interpretation and normative content which are not, still, inferentialist conceptions. For instance, Brian H. Bix (1993, 2003) has stressed the role of authority (in the form of lawmaker choice) in determining the meaning of legal terms. In a sense it is a pragmatic theory of legal interpretation, critical as to the application of theories of reference to the problem of legal determinacy. It is pragmatic since the account it gives of the meaning of legal terms is not semantic but in terms of authoritative acts determining their content. But it is not (necessarily) an inferentialist theory of legal interpretation. For stressing the role of authority does not mean accounting for the interplay and social context from which decisions stem. So, if applied to judicial decision, it is a half-pragmatic theory of legal interpretation. The judicial decision, seen as the outcome of the interpretive scorekeeping, is the result of an interplay and exchange of reasons within a trial. To be a fully-pragmatic one, a theory of legal interpretation must take into account not only the role of authority in determining the meaning of legal terms, but also (and most of all) the process of interpretive scorekeeping from which decisions stem.

Furthermore, judicial decisions can be seen as particular responses to problems originated by social interaction in a social context. Let us briefly recall some ideas of George H. Mead, who saw our individual acts as calling out an organized set of responses in a social context[19]. The organized sets of responses are related to each other: if one calls out one set of responses, he is implicitly calling out others as well. An example made by Mead are the responses in case of theft.

In the case of theft the response of the sheriff is different from that of the attorney-general, from that of the judge and the jurors, and so forth; and yet they

[19] "There is a certain sort of organized response to our acts which represents the way in which people react toward us in certain situations. Such responses are in our nature because we act as members of the community toward others, and what I am emphasizing now is that the organization of these responses makes the community possible" (Mead 1967: 265-266). On Mead see Joas 1985.

all are responses which maintain property, which involve the recognition of the property rights in others. There is a common response in varied forms (Mead 1967: 261).

So, a theft calls out a set of responses which maintain property recognizing the property rights. Now, to put it in inferentialist terms, the application of the concept theft calls out a set of inferences applying the concept of property and other concepts related to theft. Thus, such a general view of social interaction is significantly exemplified by the interaction taking place in a trial[20], and the judicial decision concluding the trial is better viewed as an outcome of that very interaction and interpretive scorekeeping rather than an authoritative decision *simpliciter*.

5. *Advantages of the Interpretive Scorekeeping Model*

If all of that is true, a pragmatic (inferentialist) explanation of semantics seems to offer some relevant advantages for a theory of legal interpretation. In particular the following advantages.

Context sensitivity
Process sensitivity
An account of contextual constraints and correctness conditions
An account of the distinction between interpretation and understanding.

On the first advantage, we remark that an inferentialist explanation of semantics permits to individuate those sentential and subsentential components which are contextually "sensible" with regard to a concrete case, and which fix the significance conditions of a legal sentence. On the second advantage, we remark that an inferentialist approach shows how the significance conditions of legal sentences are elaborated within a legal process by means of the linguistic interaction of the speakers. On the third, we remark that an inferentialist view of interpretation permits to individuate the correctness conditions of an interpretive sentence in the light of the contextual constraints put on interpretation. On the fourth, we remark that an inferentialist approach shows how to keep the distinction between interpretation and understanding. Let us say a bit more on this

[20] "The organization, then, of social responses makes it possible for the individual to call out in himself not simply a single response of the other but the response, so to speak, of the community as a whole. … We refer to that response by the symbols which serve as the means by which such responses are called out. To use the terms «government», «property», «family», is to bring out, as we say, the meaning they have. Now, those meanings rest upon certain responses" (Mead 1967: 267-268).

point. If the level of description of a linguistic practice is kept distinct from the practice itself and its presuppositions, an inferentialist approach shows how the line dividing interpretation from understanding is drawn within the linguistic interaction itself, relatively to the context and the speakers' mastery of the relevant legal concepts. In brief, there is understanding if commitments and entitlements are acknowledged by the participants in the practice; there is interpretation if they are not[21]. In this case, the speakers' technical mastery of legal concepts will be updated through the scorekeeping of practitioners' contributions in articulating reasons for adjudication.

Among the questions that can be posed concerning this model, two general questions cannot be disregarded. The first goes as follows: Is this a descriptive or a prescriptive model of legal interpretation? Perhaps the distinction does not capture the aim of the model. However, in a sense, it can be claimed it is a descriptive one, whose aim is to give an explanation of the ways in which interpretive practice determines the semantic content of legal sentences. So, if any, it is a description of significance conditions, not of actual decisions.

Then another question may be posed[22]: How can it be a good description of an interpretive practice if it uses a battery of concepts and notions which are not used in the practice itself? We believe that in principle the objection can be dismissed: there is plenty of good descriptions using concepts alien to what they describe. Think for instance at the Gricean apparatus of conversational maxims and implicatures: a good description of what happens in a linguistic exchange can be made in terms of conversational maxims and implicatures even though neither the concept of conversational maxim nor the concept of conversational implicature is used in the exchange itself[23]. What is important, is that the describing terms and concepts capture (and explain when an explanation is aimed at) some relevant aspects of what is described.

[21] Anyway, if we draw our attention on the possibility condition of linguistic interaction, such a distinction becomes quite different. It describes two related aspects of a cognitive process rather than two different cognitive processes at all. Here Brandom accepts Davidson's theses on interpretation and even presents Inferentialism as a development of Davidsonian Interpretivism: an "inferential view of rationality develops and incorporates a broadly interpretational one. For to take or treat someone in practice as offering and deserving reasons is to attribute inferentially articulated commitments and entitlements … This is a matter of being able to map another's utterances onto one's own, so as to navigate conversationally between the two doxastic perspectives: to be able to use the other's remarks as premises for one's own reasoning, and to know what she would make of one's own. Although the details of this process are elaborated differentially … deontic scorekeeping is recognizably a version of the sort of interpretative process Davidson is talking about" (Brandom 2002: 6-7).

[22] Thanks to Pierluigi Chiassoni for putting our attention on that.

[23] For a Gricean account of statutory construction see Chiassoni 1999.

6. *Drawbacks of the Interpretive Scorekeeping Model*

Of course, there are possible objections and challenges to an inferentialist view of legal interpretation. In particular the following.

The skeptical objection
The semantic objection
The fact-finding challenge
The score-quality problem
The acceptability problem.

As to the first, the question is whether an inferentialist view really differs from a skeptical view of legal interpretation. On the one hand, it doesn't seem so. Semantic content depends first on *subjective* mastery in using legal language, and secondly on the practitioners' scorekeeping of different inferential assessments of concepts and their application. On the other hand, however, such a subjective mastery is seen as a *result* of social interaction: it rests on a social level of meaning which is independent from the propositional attitudes of the single speaker. If that is true, the problem of semantic determination would be transposed into a socially construed normative scenario.

As to the second objection, the question is whether an inferentialist view is a real alternative to the traditional view of legal interpretation as based on a semantic-centered explanation of content. If interpretation itself cannot be explained making abstraction from the pragmatic interaction of the speakers and the deontic statuses assumed in using language, it is a real alternative to the traditional view. If pragmatic interaction and deontic statuses are just pragmatic aspects of semantic content and interpretation, it is not (and a "pragmatization of semantics" is not necessary). But the recent literature in the philosophy of language we referred to in Section 1 seems to show that semantic content cannot be assessed making abstraction from the contexts of use of terms and expressions; if that is true, also interpretation cannot be assessed in that way and an inferentialist view seems to be a good candidate to explain how it works.

Concerning now the fact-finding challenge, the question is whether an inferentialist explanation provides a satisfying account of the process of fact-finding. Is an inferentialist conception capable of providing an account not only of the semantic content of normative claims but also of factual claims? In particular, when scientific evidence is given in favor or against a factual claim, the most important issue, as it seems, is not what are the inferential relations among the relevant sentences, but what is the case as a matter of fact[24]. In our example, whether Perry's arm wound was serious from a medical point of view.

As to the score-quality problem, the question is whether the scorekeeping is only quantitative or also qualitative; or whether there are entitlements which are more important than others and realize more points. On the one hand, it seems reasonable to admit that in a trial certain entitlements are more important than others (a confession, for instance, is more important than a testimony). On the other, determining how many points each of them does realize is quite difficult[25].

Concerning finally the acceptability problem, the question is whether we should accept any concept which has an inferential role. What about concepts deprived of scientific justification like witch, for instance? If in a given context the inference from W's possessing characters P_1, P_2, and P_3, to W's being a witch is taken as correct, are we to take it as correct? This objection can be resisted from the point of view of Brandom's scorekeeping theory of conceptual content. In the context of discourse, and legal discourse as well, there is no inferential content that *ought* to be taken as correct by the participants. New scientific evidence can be used in a trial as reason for adjudication and so modify the inferential articulation of the discourse itself (the content of the relevant legal concepts)[26]. The normative character of the practice concerns the way of articulating reasons within a community rather than the propositional content of a sentence.

To conclude. Judging whether an inferentialist conception of legal interpretation and adjudication is a suitable one requires a discussion of these points at least, in order to check the possible advantages and drawbacks of such an approach. However the interpretive scorekeeping model captures some important aspects of legal practice which normally are not taken into account by legal theory in considering the problem of legal interpretation.

References

Atlas, J. 1989, *Philosophy Without Ambiguity*, Oxford University Press: Oxford.

Bach, K. 1999, *The Semantics-Pragmatics Distinction: What It Is and Why It Matters*, in Turner 1999.

[24] On scientific evidence and scientific testimony see Haack 2003 (especially Chap. 9). For an inferentialist account of content combined with a non-inferentialist account of truth see Esfeld 2005.

[25] Our thanks to Mauro Barberis for putting our attention on that.

[26] "Whenever an interpreter takes a community to be engaging in scorekeeping practices whose implicit properties confer one set of propositional contents on the deontic statuses they institute, there will always be alternatives, others sets of contents that could be taken to determine the pragmatic significances that scorekeepers ought to associate with discursive performances" (Brandom 1994: 638).

Bianchi, C. 2002, *Contestualismo radicale*, in C. Penco (ed.), *La svolta contestuale*, McGraw-Hill: Milano.
Bianchi, C. (ed.) 2004, *The Semantics/Pragmatics Distinction*, CSLI Publications: Stanford.
Bix, B.H. 1993, *Law, Language, and Legal Determinacy*, Oxford University Press: Oxford.
Bix, B.H. 2003, "Can Theories of Meaning and Reference Solve the Problem of Legal Determinacy?", *Ratio Juris*, vol. 16: 281-295.
Brandom, R.B. 1994, *Making It Explicit. Reasoning, Representing, and Discursive Commitment*, Harvard University Press: Harvard (Mass.) and London.
Brandom, R.B. 2000, *Articulating Reasons. An Introduction to Inferentialism*, Harvard University Press: Harvard (Mass.) and London.
Brandom, R.B. 2002, *Tales of Mighty Dead. Historical Essays on the Metaphysics of Intentionality*, Harvard University Press: Harvard (Mass.) and London.
Brink, D.O. 1988, "Legal Theory, Legal Interpretation, and Judicial Review", *Philosophy & Public Affairs*, vol. 17: 105-148.
Canale, D. 2003, *Forme del limite nell'interpretazione giudiziale*, CEDAM: Padova.
Carnap, R. 1939, "Foundations of Logic and Mathematics", *International Encyclopaedia of Unified Science*, vol. I, n. 3, University of Chicago Press: Chicago.
Carnap, R. 1956, *Meaning and Necessity*, enlarged edition, University of Chicago Press: Chicago.
Chiassoni, P. 1999, *Interpretive Games: Statutory Construction Through Gricean Eyes*, in P. Comanducci and R. Guastini (eds.), *Analisi e diritto 1999*, Giappichelli: Torino.
Coleman, J. 2001, *The Practice of Principle. In Defence of a Pragmatist Approach to Legal Theory*, Oxford University Press: Oxford-New York.
Endicott, T.A.O. 2000, *Vagueness in Law*, Oxford University Press: Oxford.
Esfeld, M. 2005, "Le pragmatisme en sémantique et en épistémologie contemporaines", *Philosophia Scientiae*, vol. 9: 31-48.
Forster, M.N. 2004, *Wittgenstein on the Arbitrariness of Grammar*, Princeton University Press: Princeton-Oxford.
Grice, H.P. 1957, "Meaning", *Philosophical Review*, vol. 67: 377-388.
Guastini, R. 1993, *Le fonti del diritto e l'interpretazione*, Giuffrè: Milan.
Haack, S. 2003, *Defending Science – Within Reason*, Prometheus Books: Amherst.
Joas, H. 1985, *G.H. Mead. A Contemporary Re-examination of his thought*, Polity Press: Cambridge.
Klatt, M. 2004, "Semantic Normativity and the Objectivity of Legal Argumentation", *Archiv für Rechts- und Sozialphilosophie*, vol. 90: 51-65.
Marmor, A. 2005, *Interpretation and Legal Theory*, revised second edition, Hart

Publishing: Oxford-Portland.
Mead, G.H. 1967, *Mind, Self, & Society* (1934), University of Chicago Press: Chicago.
Montague, R. 1974, *Formal Philosophy. Selected Papers*, Yale University Press: New Haven.
Moody, E. 1953, *Truth and Consequence in Mediaeval Logic*, North-Holland Publishing Company: Amsterdam.
Moore, M.S. 1985, "A Natural Law Theory of Interpretation", *Southern California Law Review*, vol. 58: 277-398.
Moore, M.S. 1989, "The Interpretive Turn in Modern Theory: A Turn for the Worse?", *Stanford Law Review*, vol. 47: 871-957.
Morris, C.W. 1938, "Foundations of the Theory of Signs", *International Encyclopaedia of Unified Science*, vol. I, n. 2, University of Chicago Press: Chicago.
Patterson, D. 1996, *Law and Truth*, Oxford University Press: New York and London.
Patterson, D. 2004, "Interpretation in Law", *Diritto e Questioni Pubbliche*, vol. 4: 241-259.
Peregrin, J. 1999, *The Pragmatization of Semantics*, in Turner 1999.
Putnam, H. 1975, *Mind, Language and Reality. Philosophical Papers, vol. 2*, Cambridge Univeristy Press: Cambridge.
Quine, W.V.O. 1960, *Word and Object*, MIT Press: Cambridge (Mass.).
Récanati, F. 1993, *Direct Reference: From Language to Thought*, Blackwell: Oxford.
Searle, J. 1980, *The Background of Meaning*, in J. Searle, F. Kiefer, M. Bierwisch (eds.), *Speech Act Theory and Pragmatics*, Riedel: Dordrecht.
Sellars, W.S. 1953, "Inference and Meaning", *Mind*, vol. 62: 313-338.
Stavropoulos, N. 1996, *Objectivity in Law*, Oxford University Press: Oxford.
Travis, C. 1997, *Pragmatics*, in B. Hale, C. Wright (eds.), *A Companion to the Philosophy of Language*, Blackwell: Oxford.
Turner, K. (ed.) 1999, *The Semantics/Pragmatics Interface from Different Points of View*, Elsevier: Oxford.