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A Nice Derangement of Literal-Meaning Freaks:
Linguistic Contextualism and the Theory of Legal Interpretation*

«getting rid of the last literalist prejudice, we must
stop presupposing that there is such a thing as
the minimal proposition expressed by an utterance»
François Recanati

«È il contesto che fissa il significato
e quindi le condizioni di verità»
Achille Varzi

1. *Two Views about Legal Interpretation*

With a few remarkable exceptions, jurists are not able to think by themselves about the basic issues (theoretical and practical alike) arising in the course of their professional commitments (and indeed – someone suggested – they often do not even notice them). This is the reason why philosophers – and/or economists, sociologists, psychologists, natural scientists, moralists, linguists, literary critics, jet-set gurus, cauldron-bubblers, etc. – do (and must) frequently step into the jurists’ unfairy world, aiding them to find the right path.

It goes without saying that jurists may sometimes entertain apparently sound basic beliefs, through innocent philosophising on their homely experience, like the old masters did, very long time ago, on the Aegean shores.

These finest outputs of juristic mental efforts, however, are doomed to dwell into the realm of lame, or even naked, “intuitions” (as happy as they might be), unless they may be shown to pass the test of some duly licensed philosophical outlook – or, at least, to get substantive support out of it.

* As I mentioned in the “Editor’s Preface”, the Workshop worked thanks to a few friends volunteering as proxy speakers. It is time to have a proxy writer, too. José Juan Moreso, who could not attend, having been elected President of the Pompeu Fabra University in those very days, intended to contribute with a paper relating legal interpretation to contextualism. I am not sure he would have written a paper like the present one. But proxy writers – you know – are very unreliable servants.

Within the most recent theory of legal interpretation, a field of inquiry which is deeply affected by philosophical influences and transplants, two major camps compete for paradigmatic supremacy.

Departing from the current – and rather opaque – labels, I will refer to them as “semantic quasi-cognitivism” and “pragmatic non-cognitivism”, respectively.

1.1. *Semantic Quasi-Cognitivism*

The Hart-inspired supporters of semantic quasi-cognitivism (semantic minimalism, semantic formalism, or the so-called “intermediate” or “midway theory”: in between “interpretive formalism” and “interpretive skepticism”) endorse a view about the interpretation of any piece of written law (*i.e.*, norm-formulations at the constitutional, legislative, or any other sources-level), the basic tenets of which may be recounted as follows:

(1) legal interpretation is like the interpretation of any piece of words whatever, for, in any case, it consists in ascribing to words and sentences their linguistic meaning;

(2) problems of interpretation, both in the law and outside of it, arise out of linguistic indeterminacy, due to the actual or potential (the so-called “open texture”) vagueness of the descriptive terms employed in norm-formulations;

(3) whenever a norm-formulation appears to be vague in the face of some individual case waiting for legal regulation (due to the vagueness of some of its descriptive terms), linguistic meaning has run out and, accordingly, it is to the interpreter the fixing up of such a language failure, by stipulating a meaning which is necessarily beyond the literal meaning of the norm-formulation, and represents the outcome of a discretionary – though not necessarily an arbitrary – judgement;

(4) norm-formulations, however, are by no means vague linguistic vessels all the time: on the contrary, in most situations they prove determinate in the face of the individual cases to be regulated, *i.e.*, their literal meaning is determinate enough so as to clearly include, or clearly exclude, them from the scope of the norms;

(5) when norm-formulations prove determinate, the whole business of interpreters simply amounts (and may, and ought to, amount) to applying them (straightforwardly) according to their literal meaning – *i.e.*, according to a meaning they simply “find”, or “discover”, out of the linguistic conventions as recorded in the grammars and dictionaries of the natural language employed by norm-authorities;

(6) even in the very cases where norm-formulations contain essentially-vague expressions – like the expressions naming evaluative concepts in constitutional clauses (“free speech”, “due process of law”, “cruel and unusual punishment”, etc.) – the business of the interpreters may still be discovery: for it is necessary to keep carefully separate those “thick” evaluative concepts, that are provided with

a solid core of conventional meaning and paradigmatic references, on the one side, from the most airy, “thin”, concepts, which perhaps have almost no core at all, on the other side¹.

1.2. Pragmatic Non-Cognitivism

Contrariwise to semantic quasi-cognitivists, the supporters of pragmatic non-cognitivism (or soft-skepticism, to use a more familiar expression) – of the peculiar kind I have in mind – hold the following views about the interpretation of norm-formulations²:

(1) at a certain, quite high, level of abstraction, legal interpretation is indeed like the interpretation of any piece of words whatever;

(2) this is so, however, for a wholly different reason from the one that is being invoked by semantic quasi-cognitivists: semantic quasi-cognitivists reduce

¹ See, e.g., H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 1958, in Id., *Essays in Jurisprudence and Philosophy*, Oxford, Clarendon Press, 1983, p. 63; Id., *The Concept of Law*, 1961, Second edition, with a Postscript edited by P.A. Bulloch and J. Raz, Oxford, Oxford University Press, 1994, pp. 125 ff.; G.R. Carrió, *Notas sobre derecho y lenguaje*, Buenos Aires, Abeledo-Perrot, 1965, pp. 49 ff., 70-72; H.L.A. Hart, *American Jurisprudence through English Eyes: The Nightmare and the Noble Dream*, 1977, in Id., *Essays in Jurisprudence and Philosophy*, pp. 123 ff.; J. Wróblewski, *Constitución y teoría general de la interpretación jurídica*, Madrid, Civitas, 1985, pp. 21 ff.; E. Bulygin, *On Legal Interpretation*, 1991, it. tr., *Sull'interpretazione giuridica*, in Id., *Norme, validità, sistemi normativi*, Torino, Giappichelli, 1995, pp. 257 ff. (for a concise statement, see also “Prefazione”, p. XII: «The problem of legal interpretation is dealt with [...] as a semantic problem»); J.J. Moreso, *La indeterminación del derecho y la interpretación de la constitución*, Madrid, Centro de Estudios Políticos y Constitucionales, 1997, pp. 218 ff.; A. Marmor, *Interpretation and Legal Theory*, Second edition, Oxford and Portland, Hart Publishing, 2005, pp. 9 ff., 64, 95 ff. Marmor's version is, in fact, a bit different from most of the previous ones, being centered on the distinction between the «simple understanding» of a «legal rule» according to its linguistic meaning («literal construction»), on the one side, and its «interpretation», on the other side. Furthermore, among the causes of linguistic indeterminacy, he adds family-resemblance to (ordinary) vagueness and open texture. However, like in any semantic quasi-cognitivist view, Marmor holds that, by the former activity (i.e., «simple understanding»), interpreters do simply *know* something (i.e., the literal meaning of norm-formulation and, accordingly, the law *as it is*); whereas, by the latter activity, they do necessarily engage in the «creation» and/or «modification» of the existing law, according to their ideas about what the law *ought to be*.

² Soft-skeptics are sometimes charged by semantic minimalists – or their proxy defenders – of being either hard-skeptics, or no-skeptics at all. But this is a story to be told elsewhere. I tried to do something like that in P. Chiassoni, *Archimede o Eraclito? Sul primato teorico dello scetticismo*, in “Materiali per una storia della cultura giuridica”, XXXI, 2001, pp. 365 ff.

interpretation – any token of interpretation – to a matter of applying linguistic knowledge (skill, competence) to strings of words; in so doing, however, they overlook that any interpretation of any string of words, be it within an ordinary conversation or in a legal text, is a “game” (a norm-inspired, if not a tightly regulated, transaction), where the use of linguistic knowledge (and of any other interpretive resource, like speaker’s meaning, speaker’s intention, the point of the linguistic transaction, the cherished purpose of background Deities, the dictates of Reason, Nature’s hard necessities, etc.) depends on a wide range of factors, among which one may safely enlist: (a) the role interpreters decide to play, (b) their (immediate, mid-term, and/or long-term) goal(s), if any, and (c) the arrangement of interpretive guidelines (or “code” of interpretive directives) they settle on, given the role they chose to play, the goal(s) they pursue, and the institutional and cultural constraints (they deem to be) presently afoot;

(3) so far as legal interpretation is concerned, a wide array of interpretive roles is available, ranging from full – intelligent or dull – cooperation towards the norm-authorities (the norm-formulations makers) to the opposite of deep and manifest hostility, passing through qualified forms of cooperation and under-cover sabotage;

(4) likewise, so far as the directives (and “codes”) for interpretive games with norm-formulations are concerned, a wide array of directives is available in the Western tradition, making the building-blocks for different codes;

(5) so far as legal interpretation is concerned, the interpreters’ allegiance to any interpretive code is not necessarily fixed once and for all, and in fact it may be wholly momentary, for the Western legal tradition tolerates situation-sensible shiftings of codes;

(6) some of the interpretive directives (or sub-codes) of legal interpretation games actually direct the interpreter to read norm-formulations according to their “literal meaning” (though, of course, the literal meaning may change from the time the norm-formulation was enacted to the time it is being used to decide a case, and this is another normative matter for interpreters to settle within their – momentary or quasi-permanent – code); literalist directives, however, never walk alone: other directives usually come along, to be coordinated with the “literal rule”; accordingly, the resorting – and sticking – to literal meaning, when norm-formulations are concerned, is by no means a purely “matter of course”, spontaneous, value-free, activity; it rather depends on some interpretive ideology (*e.g.*, the enlightenment ideology of interpreting statutes according to the ordinary meaning ordinary people may understand);

(7) in the light of the preceding remarks, interpretive problems are not reducible to linguistic problems – that may occur of course if, but, only if, one assumes, by way of a responsible practical commitment, that the literal rule is the only deity one must obey to;

(8) accordingly, and to conclude, when legal interpreters act *qua* interpreters, their activity never amounts simply to value-free, linguistic “discoveries” or

“findings” (not even in “clear” cases). This latter view, which semantic quasi-cognitivists still adhere to, may be regarded as a last, venomous, sting of old days interpretive formalism³.

Who is right?

Obviously, no knock-down argument is available here. Though, surprisingly as it may be, the old-days arguments from (philosophical) authority seem still to enjoy of a quite high reputation in the dispute, as if the age of reason never came.

The banners of semantic quasi-cognitivism proudly display the arms of noble forefathers within the tradition of contemporary analytical philosophy: from Rudolf Carnap to the so-called “second” Wittgenstein.

No like claim may be set forth by pragmatic non-cognitivism – of the peculiar kind I have outlined above – for it pretends to be a view conceived by philosophically-minded jurists reflecting upon their experience. However, a few (philosophical) godfathers for pragmatic non-cognitivism may be found too, if needed. In fact, they may come from the same analytical tradition: the “second” Wittgenstein seemingly pops out here too, along with J.L. Austin, F. Waismann and, more recently, J.R. Searle.

In a previous paper, I tried to argue for soft-skepticism, and against semantic quasi-cognitivism, on the basis of Paul Grice’s theory of conversational maxims⁴.

In the present paper, I will attempt to do the same by resorting to linguistic contextualism. Contextualism seems to provide a further line of argument supporting soft-skepticism, on the one side, while turning down semantic quasi-cognitivism, on the other. Or, at least, this is what I am going to suggest in the final

³ I argued for something like this version of pragmatic non-cognitivism in P. Chiassoni, *Codici interpretativi. Progetto di voce per un Vademecum giuridico*, in P. Comanducci, R. Guastini (eds.), *Analisi e diritto 2002-2003. Ricerche di giurisprudenza analitica*, Torino, Giappichelli, 2004, pp. 55-124. For a different presentation of pragmatic non-cognitivism, see also R. Guastini, *A Sceptical View on Legal Interpretation*, in this Workshop proceedings. A similar view – by way of theoretical reconstruction and within a non-analytical perspective – is notoriously defended by Ronald Dworkin, *Law’s Empire*, Cambridge, Mass., Harvard University Press, 1986. A few more words, concerning the label “pragmatic non-cognitivism”, are perhaps in order. I use “pragmatic” to emphasize the idea that legal interpretation concerns legal token-sentences (utterances, inscriptions), within specific situations, where the role of the interpreter is paramount as to the determination of their “meaning”: in fact, it is the interpreter who decides how much bearing ought to be recognized to the norm-formulations makers. I use “non-cognitivism” to emphasize that the legal interpretation business is, on the whole, a practical, not theoretical, one.

⁴ See P. Chiassoni, *Interpretive Games: Statutory Construction Through Gricean Eyes*, in P. Comanducci, R. Guastini (eds.), *Analisi e diritto 1999. Ricerche di giurisprudenza analitica*, Torino, Giappichelli, 2000, pp. 79-99.

section below (§ 3), after a very swift account of the major points of linguistic contextualism (§ 2).

2. Linguistic Contextualism in a Nutshell

Broadly speaking, “contextualism” refers to any intellectual stance – which may be a piece of some larger outlook – according to which “context is relevant”: whatever one may mean by “context” and whichever the enterprise it may be deemed “relevant” for.

Accordingly, as soon as we consider the several fields of learning, we may speak of “contextualism” – and of a “contextual perspective”, a “contextual turn”, etc. – as regards such different subjects as artificial intelligence, epistemology, hermeneutics, linguistics, philosophy of language, theology, etc.⁵

The sort of contextualism I am concerned with here is “linguistic contextualism”: the variety about the meaning of words and sentences, which has been worked out, from the late 1970s onwards, to cope with the (alleged) failures of “the traditional semantic paradigm” (“semantic minimalism”, “literalism”)⁶.

“Linguistic contextualism”, however, does not refer apparently to a single, full-fledged, theory of meaning. It rather stands for a set of different theoretical outlooks (sometimes regarded as «programs of research»), among which one may distinguish “soft” (or “moderate”) views from “hard” (or “radical”) ones⁷.

2.1. Semantic Minimalism

Semantic minimalism (the traditional semantic paradigm, literalism) is the common foe, and target, of both camps of linguistic contextualism. Its basic features may be recounted as follows.

⁵ See, e.g., W.A. Dembski, *The Fallacy of Contextualism*, in “The Princeton Theological Review”, 1994 (also published at http://www.arn.org/docs/dembski/wd_contextism.htm); C. Penco, *Le ragioni di una svolta*, in C. Penco (ed.), *La svolta contestuale*, Milano, McGraw-Hill, 2002, pp. xiii-xxxv; J. Perry, *Contesti*, Genova, De Ferrari, 2002; N. Vassallo, *Conoscenza e natura*, Genova, De Ferrari, 2002, pp. 30 ss.; T. Black, *Contextualism in Epistemology*, in *The Internet Encyclopedia of Philosophy*, 2005 (<http://www.iep.utm.edu/c/contextu.htm>).

⁶ My sources for this presentation of linguistic contextualism have been basically the following: C. Bianchi, *Il contestualismo*, SIFA National Conference, Bologna, September 23-26, 1998 (<http://sifa.unige.it/2eve/ab98/bia.htm>); C. Bianchi, *La dipendenza contestuale. Per una teoria pragmatica del significato*, Napoli, ESI, 2001; C. Bianchi, *Contestualismo radicale*, in C. Penco (ed.), *La svolta contestuale*, pp. 253-265; F. Recanati, *Literal Meaning*, Cambridge, Cambridge University Press, 2004.

⁷ See C. Bianchi, *La dipendenza contestuale. Per una teoria pragmatica del significato*, pp. 279 ff., 297 ff.

(1) *The semantic determination thesis.* The linguistic (literal, semantic, conventional) meaning of expressions – words and type-sentences – determines the conditions of applications of words and the satisfaction-conditions of the corresponding token-sentences (*i.e.*, the truth-conditions of declarative token-sentences and the abiding-by-conditions of normative sentences), *whichever* their context of utterance.

(2) *Direct v. indirect semantic determination.* Semantic determination works in two different ways: either directly; or indirectly, through semantic “rules of saturation”.

It works directly, so far as non-indexical expressions are concerned (*i.e.*, any expression naming a concept, which may be used as a predicate).

It works indirectly, on the contrary, so far as pure indexicals (“I”, “now”, “here”), demonstratives (“he”, “she”, “this”, “those books”, “that cat”, etc.), and other contextual expressions (“my book”, “Johnny’s dog”, “Rebecca’s masterpiece”, “she got the book”, etc.) are concerned.

In all these cases, the semantic value (content and reference) of the expression is determined in the light of the context of use, by its literal meaning working either (a) as a “rule of automatic saturation”, when pure indexicals are at stake, or (b) as a rule of semantic governance of saturation, as to demonstratives and other contextual expressions, pointing in both cases to their proper reference in the world.

(3) *Semantic meaning v. speaker’s meaning.* The semantic meaning of any token-sentence (mirroring the semantic meaning of the corresponding type-sentence) amounts to «“what is said”, or the proposition expressed, by that utterance», and should be carefully kept apart from “speaker’s meaning”, *i.e.*, the “implicit meaning”, or «what the speaker overtly intends [...] to get across through his or her utterance».

(4) *Context-dependence of speaker’s meaning.* The speaker’s meaning of any utterance may either utterly match its semantic meaning, or depart somehow from it (going beyond or otherwise diverging from it). To tell which is the case, the context of the utterance has to be taken into account, paying attention to its pragmatic features (speaker’s intentions, beliefs, attitudes, etc., within the specific situation of utterance and the background world).

(5) *Dualist perspective on utterance meaning.* In the light of the previous views, the “full” meaning of any token-sentence (utterance) is made, accordingly, by the combination of two separate components: on the one side, its semantic or literal meaning, which is determined (directly or indirectly) by linguistic conventions (linguistic system); on the other side, its speaker’s meaning, which is pragmatic and context-dependent⁸.

⁸ See C. Bianchi, *La dipendenza contestuale. Per una teoria pragmatica del significato*, pp. 24 ff.

2.2. Linguistic Contextualism

In the present account of linguistic contextualism, I will set forth, first, the basic tenets which are shared by moderate and radical contextualism alike. Secondly, I will outline, in turn, each side's own peculiarities.

2.2.1. Basic Tenets

Two basic tenets make up the core of linguistic contextualism.

(1) *The underdetermination thesis*. The linguistic (conventional, literal, or semantic) meaning of any type-sentence “underdetermines” (*i.e.*, does not completely and univocally determine beforehand) the satisfaction-conditions (truth- or abiding-by- conditions) of the corresponding token-sentence.

(2) *The generalized context-dependence thesis*. The meaning of any token-sentence – its satisfaction-conditions – is always determined by pragmatic factors within the specific context of utterance⁹.

2.2.2. Moderate Contextualism

Moderate Contextualism complements the underdetermination thesis and the generalized context-dependence thesis in such a way, so as to *save* (as much as possible of) the idea of a pre-existing, and fixed, conventional meaning for any token-expression. This is done by endorsing the following views.

(1) *The frame conception of literal meaning*. The conventional (literal, semantic) meaning of any expression is made of a fixed set of variables: a “frame”, or “structure”, of meanings, to be “instantiated”, or “saturated”, by speakers / interpreters in the specific contexts of utterance. Once such a saturation has been performed, it is possible to identify the meaning (satisfaction-conditions) of any token-sentence, by combining the meanings of its constituent, sub-sentential, token-expressions, according to the principle of compositionality.

(2) *The pragmatic saturation thesis*. The “saturation”, or “instantiation”, of the conventional frame of fixed meanings depends on pragmatic considerations, grounded on the encyclopedic knowledge of the interpreter, the linguistic co-text,

⁹ For instance, according to Searle, it depends on the “background assumptions” (consciously or unconsciously) selected by the speaker / hearer. See J.R. Searle, *The Background of Meaning*, in J.R. Searle, F. Kiefer, M. Bierwisch (eds.), *Speech Acts Theory and Pragmatics*, Dordrecht, Reidel, 1980. On this point, C. Bianchi, *Contestualismo radicale*, p. 256. I have briefly outlined Searle's conception of literal meaning as a model for juristic considerations on the same subject in P. Chiassoni, *Significato letterale: giuristi e linguisti a confronto (Another view of the Cathedral)*, in V. Velluzzi (ed.), *Significato letterale e interpretazione del diritto*, Torino, Giappichelli, 2000, pp. 20 ff.

and the extra-linguistic context¹⁰. The final outcome of such a process of saturation is one complete and definite meaning for the token-sentence at hands.

(3) *The priority of system over context*. Like with pure indexicals, demonstratives and other contextual expressions, the way of pragmatic saturation of the conventional meanings' loose ends is determined beforehand by the linguistic system (remember the above-mentioned idea of rules of semantic governance of saturation) and, accordingly, is not dependent on the occasions of utterance. Semantic content rules – though very softly – over contextual inputs.

Surprisingly as it may be, from the standpoint of a jurist endowed with a fair acquaintance of the pure theory of law and realistic jurisprudence, the ideas of moderate contextualism – or, more precisely, the first two views above – are by all means familiar.

In fact, they roughly recall a few ideas of Adolf Merkl and Hans Kelsen, dating back from the 1910s-1930s, according to which:

(a) general legal norms are “frames” (*Rahmen*) of several alternative meanings, that are identified by playing in turn, on the same norm-formulation, each of the several interpretive methods available in the relevant legal tradition (which methods, from a linguistic viewpoint, are vehicles of pragmatic considerations);

(b) “scientific interpretation” consists precisely in identifying the frame and is, accordingly, unable to point to *one* meaning as the “correct” legal meaning of the norm-formulation;

(c) the identification of the “correct” legal meaning of any norm-formulation is, accordingly, the outcome of a choice, which is an act of “political interpretation” (and, from a linguistic viewpoint, roughly amounts to the pragmatic saturation of the frame mentioned above)¹¹.

A few differences between moderate contextualism and the Merkl-Kelsen view are worthwhile emphasizing.

On the one hand, moderate contextualism regards pragmatic considerations as a servant to semantic rules, and, accordingly, would reduce all the interpretive methods considered by Merkl and Kelsen (different from the literal rule) to ways of pragmatic saturation of the literal frame. By contrast, according to Merkl and Kelsen, these other interpretive methods point to alternative, and autonomous, meanings of the norm-formulations (meanings which, from the viewpoint of the traditional semantic outlook, are “lawgiver’s meanings”, in a very broad sense of the phrase).

On the other hand, by regarding the literal meaning of any expression as a frame, moderate contextualism suggests that the appeal to literal interpretation is

¹⁰ See C. Bianchi, *Contestualismo radicale*, pp. 259-261, 263; Id., *La dipendenza contestuale. Per una teoria pragmatica del significato*, pp. 279 ff.

¹¹ See, e.g., H. Kelsen, *Reine Rechtslehre*, 1960, Wien, Verlag Österreich, 2000, ch. VIII; for a (officially) realistic perspective, see A. Ross, *On Law and Justice*, London, Stevens & Sons, 1958, pp. 108 ff.

by no means an easy play. Here, Merkl and Kelsen hold apparently a more moderate view, for they seem to endorse the idea of a contingent ambiguity of the literal meaning of norm-formulations – while, on the contrary, according to moderate contextualism, such an ambiguity is systemic.

2.2.3. Radical Contextualism

Contrariwise to the moderate view, radical contextualism complements the underdetermination thesis and the generalized context-dependence thesis in such a way, so as to *getting rid* of the very idea of a pre-existing, and fixed, conventional meaning for any token-expression. This is done by endorsing the following views.

(1) *Referentialism and the elimination of any strong idea of a linguistic meaning.* The meaning of any concept-word is not a fixed set of (necessary and sufficient) *conditions* of application, as it is claimed by traditional semantic theories.

On the contrary, it is a set (“a collection”) of past *applications* (references) – validated by linguistic practices, and recorded and typified in dictionaries – providing for the “semantic potential” of the expression.

(2) *Output conception of the meaning of token-sentences.* The meaning of any token-sentence is not – not even in part – determined by a pre-existing, and fixed, semantic meaning, working as something *given*, to be coped with in any case.

It is, on the contrary, the *outcome* of a process of meaning-determination and meaning-ascription, which is context-dependent (“pragmatic”) «through and through».

(3) *The not-unraveling thesis.* In the light of the preceding views, the meaning of any token-sentence depends on its context of utterance in such a way, that it is never possible to unravel beforehand the contribution of linguistic conventions and semantic competence (the linguistic system), on the one side, from that of the world, encyclopedia, and pragmatic considerations, on the other side, so as to its exact determination.

(4) *The contextual meta-dependence thesis (or, the priority of context over semantic content).* The way context (*i.e.*, inputs from the co-text and extralinguistic context) is – and ought to be – relevant in the determination of the meaning of token-expressions and token-sentences, as well as the value to be ascribed to “semantic structures” (past applications of words and rules of grammar) in such a process, do not depend on semantic conventions (the system of language), as it is claimed both by traditional semantic theories (with regard to indexicals, demonstratives, and other contextual expressions) and by moderate contextualism. They depend, on the contrary, on the very context of use of the utterance. Context rules over its own relevance.

(5) *Necessary commitments of the parties to a linguistic transaction.* Any linguistic transaction – from the most trivial conversation, to the writing and reading of any piece of literary, scientific, or legal work – is ruled by *cognitive norms* of rationality, establishing the criteria of successful communications. Accordingly, participation to any linguistic transaction involves a commitment to these norms – or the conscious departing from them. In both cases, each participant is *responsible* for her/his behavior as a speaker, writer, hearer, reader, etc.

(6) *The aptness of a broad concept of “interpretation”.* In the light of the preceding views, any piece of linguistic communication may be regarded as a pragmatic enterprise, where the meaning of any token-sentence, from the viewpoint of hearers and readers, depends, on the whole, on an intellectual activity grounded on pragmatic considerations, which may be safely called “interpretation”. Interpretation is general (and pragmatic) all over linguistic transactions¹².

3. *Radical Contextualism and the Theory of Legal Interpretation*

Assuming that radical contextualism represents a sounder view than semantic minimalism, a few conclusions may be drawn out of it about the views of legal interpretation I mentioned at the outset: *i.e.*, semantic quasi-cognitivism and its counterpart, pragmatic non-cognitivism.

(1) The literal meaning, on which semantic quasi-cognitivism builds the very possibility of distinguishing – on the apparently safe rocks of linguistic conventions – the “law as it is” from “the law as it ought to be”, appears to be an illusion.

Linguistic conventions alone are not enough to determine any meaning for any expression in a context. They always need to be read within – and complemented by – a set of background views about the world (of which they make part), the legal tradition and legal experience, the “proper” role of the lawgiver, the “proper” role of interpreters, etc.

Accordingly, the strict allegiance to linguistic conventions, as the one apparently sponsored by semantic quasi-cognitivism, if viable at all, is likely to lead to unreasonable outcomes – which semantic quasi-cognitivism surely would not accept.

(2) If we follow contextualism – and, by the way, in the light of how legal practice works, we have quite good reasons for doing so – what jurists are used to call the “literal meaning” of norm-formulations has to be regarded as a pragmatic item.

¹² See C. Bianchi, *Contestualismo radicale*, pp. 261-263; Id., *La dipendenza contestuale. Per una teoria pragmatica del significato*, pp. 297 ff., 349 ff.; F. Recanati, *Literal Meaning*, pp. 3-4, 83 ff., 131 ff.

Accordingly, the use and the identification of the “literal meaning” of any norm-formulation do not enjoy of any special axiological and epistemic *status*: literal meaning is not the white galleon of objective semantic knowledge flying its unscathed hull above the mutinous and muddled waters of context-dependent, pragmatic, meanings.

On the one hand, the very appeal to “literal meaning” does necessarily depend on some methodological option within an extra-linguistic context.

On the other hand, the identification of “the literal meaning” of any expression requires pragmatic considerations (Which background assumptions? Which conventions? Which theory about the unarticulated parts of norm-formulations? Which level of overall cooperation with the lawgiver?).

Both activities clearly belong to the realm of practice: *i.e.*, the realm of actions to be justified against a background of rules and principles – that are not *semantic* rules and principles.

(3) Dealing with the issue of the “interpretation” / “understanding” of norm-formulations and the related issue of the “existence of rules”, semantic quasi-cognitivism muddles a (very simplified version of a) theory of meaning with practical (normative) considerations.

Semantic quasi-cognitivism pretends to solve the delicate problem concerning the way of distinguishing “the law as it is” from “the law as it ought to be”, by turning it into a problem of philosophy of language (and linguistics), and claiming that it admits of *one* set of solutions only, from the internal and the external point of view alike.

However – as legal realists on both sides of the Atlantic suggested long time ago – such a distinction rises a *normative* problem: a problem which may be scientifically dealt with only from the external viewpoint of a sociologist of legal interpretation and an observer of the so-called doctrinal study of law and its literary outputs.

(4) By contrast, the view about legal interpretation I named “pragmatic non-cognitivism” appears basically in tune with the central features of radical contextualism (compare § 1.2. with §§ 2.2.1. - 2.2.3. above). Furthermore, it gets support from radical contextualism, while preserving its peculiarities as a theory of *legal* interpretation. This seems to make the case for pragmatic non-cognitivism even stronger.