recognise
Legal Reasoning
& Cognitive Science

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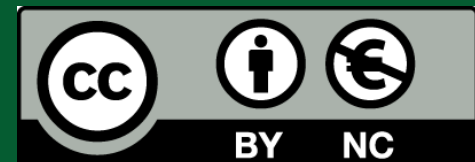
Legal reasoning, rhetoric, and ideology.

Some perspectives from both traditional legal theory and the cognitive science

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Recognise- INTENSIVE STUDY PROGRAMME I
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Some Preliminary Remarks on Legal Interpretation and Legal Reasoning

What is interpretation?

•**General definition**:

To interpret means to award a meaning to an entity that needs an ascription of meaning

•**Two senses of 'interpretation'**:

-Interpretation/activity: the activity of establishing the meaning of some documents
-Interpretation/product: the result of this activity

•**Interpretation as the relationship between:**

a) the intention of the author of something
b) the meaning of the object of the interpretation quite apart from the intention of his author
c) the intention of the interpreter himself/herself

What is legal interpretation?

The object of legal interpretation is, by definition, the law, so:

What is law?

-**Law**: system or set of *legal texts*
-**Legal texts**: written linguistic expressions*(/statements)*

•**Language** is the object either of **legal interpretation** and of **literary interpretation**

  -**Signs** *(something natural)*
-**Symbols** (artificial and conventional products of human beings)

Interpretation in law and in literature

Similarities:

•Linguistic problems

Vagueness: a word is vague if its reference is indefinite (ex.: the term 'bald' or the norm saying "No vehicles in the park").
-clear applications
- uncertain applications
Ambiguity: a word is ambiguous when it has more than one meaning (ex.: the word 'bank')
•The relevance of the **context**

Differences:

•Legal interpretation is instrumental to the application of a general norm to a concrete case because law fulfils a practice function of regulating social life

↓

Legal interpreter is *forced* to choose one among the various possible interpretations

-Interpretative formalism

-Interpretative anti-formalism

-Hart's theory of legal interpretation

Interpretative Formalism

The interpreter's task is to **understand the meaning of a legal text**.

-**The meaning of a legal text** pre-exists the **interpretation itself**;

- law's application is **mechanical** (syllogism)

•**Major Premise** P→ C

•**Minor Premise**   P

•**Conclusion**   C

Interpretative anti-formalism

-The interpreter's task is **to create the meaning of a legal text**;

-Norms **are** too **general, vague and ambiguous** for clearly directing the task of judging;

-**The ideal of "doing justice according to law"** is nothing but a myth;

Radical anti-formalism (J. Frank): excludes the intention of the author of the text and the meaning of the text itself and reduces interpretation to the intention of the interpreters that find some legal justification for backing their decisions.
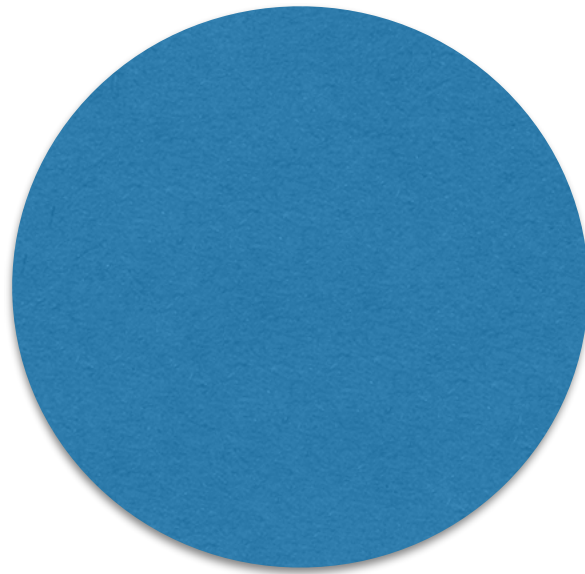
The law depends on what judge had for breakfast (J. Frank)
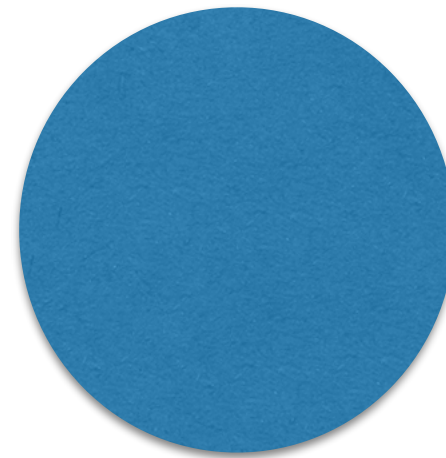
Hart's Theory of Legal Interpretation

Formalism and rule- scepticism are the Scylla and Charybdis of juristic theory; they are great exaggerations, salutary where they correct each other, and the truth lies between them.
CL, 147

Open Texture

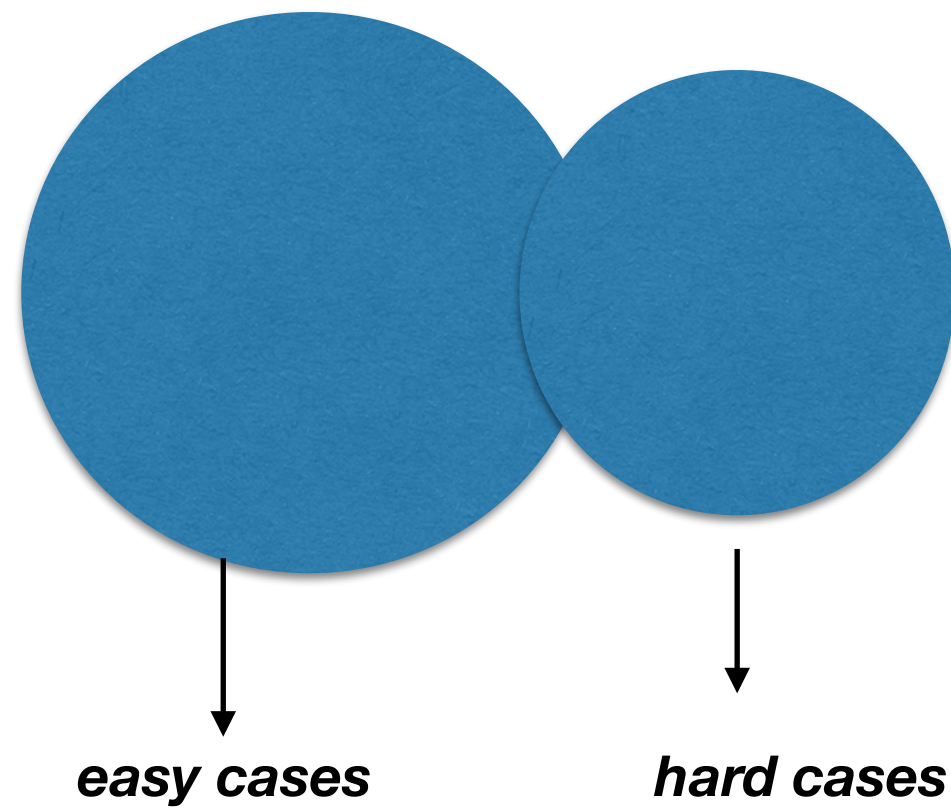*easy cases*

hard cases

Sorites Paradox

Open Texture

easy cases   *hard cases*

What is legal reasoning? I

Two meanings of 'reason':

- 'Reason' as explanation

Ex: *Rubin Carter was convicted of murder because he was an afro-American*

- 'Reason' as justification

Ex: *Tom was convicted of murder because the murder weapon was in his car, and…*

What is legal reasoning? II

Legal reasoning concerns the justification of an interpretation of a legal text (legal reasoning properly so-called) or the justification of the application of a norm to a concrete case (judicial reasoning).

Legal Reasoning as a Rhetoric Activity I

Argumentation A

i. According to the statements in the preparatory works, the word P, in the legal text F, means S1.

ii. So, in the legal text F, the word P means S1.

Legal Reasoning as a Rhetoric Activity II

Argumentation B

i. According to the English language rules, the word P, in the legal text F, means S2.

ii. So, in the legal text F, the word P means S2.

Legal Reasoning as a Deductive Activity I

Argumentation A

i. The words in the legal texts should always be interpreted according to the preparatory works.

ii. According to the statements in the preparatory works, the word P, in the legal text F, means S1.

iii. So, in the legal text F, the word P means S1.

Legal Reasoning as a Deductive Activity II

Argumentation B

i. The words in the legal texts should always be interpreted according to the English language rules.

ii. According to the English language rules, the word P, in the legal text F, means S1.

iii. So, in the legal text F, the word P means S1.

**Legal Reasoning and the Cognitive Science:
Three interesting intersections' points**

- Explanation vs. justification: a clear-cut distinction?

- The conscious and unconscious role of Ideology

-Extraneous factors in judicial decisions

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Thank you!