SEMANTIC BASIS OF THE THEORY OF LEGAL INTERPRETATION

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Legal interpretation is not only the battlefield on which cases are decided in practice but it is also the area of the most ancient and violent disagreements in the field of legal theory or jurisprudence. And this is no wonder: the problems of legal interpretation involve the most controversial topics of philosophy (understanding of language), ethics (Justice of decision) and jurisprudence (position of the judge in the performance of his «proper» function), not to mention the socio-political ones (stability versus elasticity of law in relation to the activity of lawmaker and interpreter of the law) (1).

Not all writings on legal interpretation are concerned with all the above-mentioned problems, which are additionally complicated by the influence of the legal system (e.g. statutory or case-law), and sometimes by particularities of the kind of law (e.g. taxation or criminal law versus family or labour law). But the net result of the whole situation is a vast amount of various theories and sometimes the loss of any hope of solving general problems of legal interpretation, which results either in nihilistic conceptions of the meaning of legal norms or in the loss of interest in any general theory in that field and preoccupation with the more practical work of the analysis of concrete cases and decisions.

The writer's opinion is, however, that many of the traditional problems of legal interpretation can be elucidated by the semantic approach which makes use of the modern tools of the logical analysis of language (in the widest sense of this term) in the field of legal interpretation. This approach shows clearly what sort of problems the interpreter of legal questions has to deal with and what factors influence the choice he has to make. It seems that such clarification has some relevance for legal theory and for theories dealing with the general problems of understanding any language. I will try to show the semantic basis for the theory of legal interpretation, using, as a model, the problems of statutory interpretation (or as it is sometimes called — of statutory construction) since they are better known to the writer than those of the common law. It

(1) By «interpreter» we mean the person interpreting legal norms.

seems that the semantic approach could be adapted for the needs of the latter without essential changes in the conceptual framework, with the main conclusions remaining without alteration in that area too.

I

1. It is necessary to distinguish between the descriptive and the normative point of view in dealing with any topic and especially in the field of legal interpretation (2).

The problems of legal interpretation, treated in the former way, are concerned with the description of how legal norms are interpreted in a given legal system, within chosen limits of time. The Court is the most relevant interpreter and therefore I shall limit myself to the court's interpretative behavior. What could such a description include ? Of course various aspects of interpretative behavior, and especially the content and form of interpretative statements in the contexts of particular decisions, factors influencing interpretative behavior, uniformities, if any, that can be traced in that behavior and, eventually, prognoses concerning that behavior in the future. It is possible to build up descriptive theories of legal interpretation dealing with the above-mentioned topics. It is not possible, however, to formulate any evaluative opinions as to what is the «true» meaning of interpreted norms. We always deal with the interpretation of one or a group of interpreters and our conclusions are only a description or prognosis of the corresponding interpretative behavior, not its evaluation.

From the normative point of view the core of the problems of legal interpretation lies in how interpretation is to the interpreted legal norm. From that point of view the formulation of the directives of legal interpretation, the evaluation of the process of legal interpretation in the traditionally used terms of whether it is *secundum, praeter* or *contra legem* is especially important (3).

2. Current thinking in the matters of legal interpretation is, as a rule, a conglomerate of assertions taken from the descriptive and normative point of view, or to be more precise, there are a great

(2) Compare J. Wroblewski, *Opisowa i normatywna teoria wykladni prawa,* Panstwo i Prawo, 1958, n. 7, p. 45-60.

(3) Compare J. Wroblewski, *Interpretatio secundum, praeter et contra legem,* Panstwo i Prawo, 1961, n. 4/5, p. 615-627.

many assertions which are normative in purport but treated as if they were descriptive. The descriptive assertion of the lack of a uniform understanding of interpreted norms among various interpreters is put forward as a reason for arguing that the interpreter ought to interpret freely on the basis of his own moral intuitions. The role of the directives of interpretation is differently estimated in various assertions, ranging from treating them as a mere magical trick to hide the notorious arbitrariness of decisions which assign meaning to legal norms, to postulates almost aiming at the codification of these directives giving them legal validity by enactment similar to that of legal norms (4).

To analyze the variety of opinions on how interpretation is done and how it should be done, it is necessary to make some order in the basic tenets of each theory of legal interpretation, as well as to put forward some assertions not depending on a particular evaluative bias, because the latter strongly influences all discussions on legal interpretation. To achieve that purpose it seems necessary to begin with general problems of understanding legal norms as some sort of linguistic expressions in a given language, to discuss the meaning of legal norms in terms of the directives of meaning of legal language, and to describe the problem of the ambiguity and vagueness of the legal norm as put before the interpreter. Only on the basis of a semantic approach is it possible to see clearly the problems of legal interpretation and to distinguish clearly between the more or less limited range of freedom that each interpreter has available to him.

One has to be cautious in introducing somewhat strange notions of modern semantics into the field of legal discourse but it is worth trying, for it seems to be the surest, simplest, and most straightforward way to deal with the problems we have just spoken.

II

1. Language may be viewed as a system of signs used according to certain operative rules and conveying some sort of information.

(4) For American jurisprudence see J. WITHERSPOON, *Administrative Discretion to Determine Statutory Meaning: «The High Road»*, 35 Texas Law Review (1956) p. 63-92; and his *Administrative Discretion to Determine Statutory Meaning: «The Low Road»*, 38 Texas Law Review (1960), p. 392-438.

Of course there is a great variety of conceptions of language, determined by the point of view from which one investigates language. Compare, for example, the approach of an ethnologist or a linguist with that of a logician, compare the difference of the objects named as «everyday language», «legal language» and «language of the given deductive system». For our limited purposes it is sufficient to treat language as described above and to devote our attention to legal language only, as far as it is relevant to the problems of legal interpretation.

Each language consists of a certain set of simple signs which are used according to certain syntactic rules to build complex signs. The most common are syntactic rules of everyday language which formulate the ways of building complex linguistic utterances, such as statements from various parts of speech. These rules are well known and there is no difficulty in understanding the necessity of such rules, and that relatively strict compliance with them is essential when using a given language.

For the problem of the meaning of legal norms, we must consider, however, another kind of rule, not commonly or even intuitively known. There we must seek the help of modern semantics.

In every language we have directives of sense, according to which anybody using a given expression of that language acknowledges the truth or falsity of the expression (5). For example everyone using the term «dime» in American language has to assert the falsity of the statement «This is a dime» when someone shows him a piece of 25 cents.

We have three kinds of directives of sense specifying the conditions under which anyone, using in a meaningful way the expressions of that language, has to acknowledge the truth or falsity of the expression. They are empirical, deductive and axiomatic.

Empirical directives state that everyone, using a given expression in a meaningful way in a given language, has to acknowledge the truth or falsity of the expression depending on the empirical situation in which that expression is used. As an example we may take the above illustration concerned with the meaningfulness of the use of the word «dime».

Deductive directives state that everyone, using a given expression in a meaningful way in a given language, has to acknowledge the

(5) The construction of the directives of sense was put forth in K. AJDUKIEWICZ, *Sprache und Sinn*, Erkenntnis, 1934, p. 101-116.

truth or falsity of the expression depending on the acknowledgement of the truth or falsity of other expressions. For example everyone, using in a meaningful way the term «Sunday» in English, has to acknowledge the truth of the expression «To-day is Sunday» if he acknowledges the truth of the assertion «Yesterday was Saturday».

Axiomatic directives state that everyone, using in a meaningful way certain expressions in a given language, must acknowledge the truth or falsity of the expression without regard to any condition. For example anyone using the word «triangle» in English has to acknowledge without any conditions the truth of the expression «the triangle has three angles».

In everyday language we can see all three kinds of the above mentioned directives of sense, but we must remember that that language, from the point of view of semantic analysis, can be described as a conglomerate of various types of languages. The language of a particular formalized deductive system would be a language based only on the axiomatic and deductive directives of sense.

It seems, however, that the three kinds of directives do not exhaust all the directives of everyday language, since they regulate the use only of expressions which themselves may be qualified as true or false. And it is largely admitted, that not all expressions of everyday language could be qualified in that way. For instance there is a discussion whether norms, and especially legal norms, can be treated as true or false expressions, or whether legal norms are «sentences» in the logical meaning of the term.

2. We cannot discuss here that very interesting and controversial topic of the semantic status of legal norms (6). Let us assume that legal norms are one member of the class of expressions which are neither true nor false. But, from the point of view of their function in society, one cannot assert they have no sense.

Legal norms do influence human behavior in specific ways, and hence they have some meaning for persons affected by them. Legal norms do not only affect that behavior in a general way. The highly specific character of that influence is expressed best in the saying that legal norms can regulate human behavior in details and can «build» certain legal institutions and «create» for that purposes such social phenomena as law-jobs to deal with law-crafts with specified

(6) Compare, J. Wroblewski, *Zagadnienia teorii wykladni prawa ludowego*, Warszawa 1959, p. 31-43, 51-77.

law-stuff to use Llewellyn's terminology (7). This all compels us to go outside the construction of the directives of sense of a language as briefly described above. All theories of the so-called emotive meanings of norms (and value-judgements) (8) treating norms as mere expressions of certain states of mind are not sufficient to deal with semantic problem of the meaning of legal norms. We have to get out of this situation by enlarging the number of the directives of sense. And thus we have to explain the sense of legal norms in terms of special directives of sense.

Therefore, let us formulate a tentative directive of sense for legal norms (or their parts) based on the assumption that norms are expressions which can be qualified neither as true nor false. For clarity's sake let us use the simplified formula of a legal norm in the form of «Under conditions *C* a person from class *P* ought to behave in the manner *B*». This formula, of course, can be changed to fit any preconception as to the structure of the legal norm, for there is a great deal of discussion on that topic in the contemporary legal theory and it is not possible to enter into that field here. I must underline, however, that for any particular conception of the structure of a legal norm we can make such a directive of sense as that below. I have chosen the formula for its relative simplicity and not because of any conviction that it would be the only «right» one.

To make a norm from the given above formula, one has to substitute some «values» for the variables C,P,B. Our directive would be: everyone who uses in a meaningful way in a given language the norm formed by the above mentioned substitution in the formula, must acknowledge that the norm is fulfilled then and only then when, under given conditions, a person from the given class behaves in a way prescribed by that norm. We can see from that directive of sense that it is built on the close analogy of other directives of sense, but it does not mention the question of the truth or falsity of the expressions tested as meaningful. Any lawyer would

(7) E.g. K. N. Llewellyn, *The Normative, The Legal and The Law Jobs: The Problem of Juristic Method,* 49 Yale Law Review (1940) p. 1358-1359. We use here, however, the term «law-stuff» in the more restricted sense.

(8) For emotive theory of meaning compare C. L. Stevenson, *Ethics and Language,* New Haven 1948, p. 38 and seq. A. I. Ayer, *Language, Truth and Logic,* London 1931, p. 158 and seq. I. Hedenius, *Values and Duties,* Theoria 1949, p. 112 and seq. C. Wellman, *The Language of Ethics,* Cambridge 1961, p. 183 and seq.

ask now what happens, if there is no agreement whether a given norm is or is not fulfilled under circumstances described in our directive of sense? To answer the question we have to solve the problem of legal interpretation, dealing with the ambiguity or vagueness of legal norms. Before we shall try to do that, we have to consider the characteristics of legal language relevant to our investigations.

3. Everyday language may be conceived as a means of transferring information and influencing human behavior in everyday life within a given society. It is mostly a product of unplanned evolution, conditioned by various factors not to be even enumerated here. Everyday language is a social fact of extreme importance in every civilization and, for many reasons, that kind of language may be treated as the Language.

We have, however, several «special» languages formed or evolved quasi-spontaneously for the needs of narrower social groups, mostly for gathering and sharing information in the special fields of scientific and practical activity. Of course, such a characterization of special languages is very rough, but it is sufficiently clear for our purposes.

We can speak about a legal language, as a kind of «special», language, the language in which legal rules are formulated and in which one can speak about legal rules (9). From the semantic point of view, especially for the purposes of the analysis of the statutory law, we have to separate strictly two kinds of legal language. The first is the «statutory language» as used in the statutes and other «sources of law», and the second is «lawyer's language», the language used in dealing with law expressed in «statutory language» — it is the language used e.g. by a judge, a counsel or a scientist. From the semantic point of view the latter language is the «meta-language» of the former. In the common-law system the difference is not so sharply marked, because there is no difference (both in theory and practice) between the creation and application of law, as there is, at least in theory, in the statutory law countries.

Omitting the above-mentioned differences between the two levels of legal language, we have to describe some of the peculiarities of that language in relation to everyday language.

Firstly, there are some differences in the meaning and ways of use of particular terms, there being no difference in their form.

(9) Compare B. Wroblewski, *Jezyk prawny i prawnoczy*, Krakow 1948, *passim*; J. Wroblewski, *Zagadnienia, op.cit.*, p. 230 and seq.

«The same» term in legal language and everyday language may have quite a different meaning or it may represent a difference of the area of application with the more precise delimitation of their boundaries.

Secondly, there are possibilities of purposive shaping of legal language to an extent not existing in everyday language. The activity of the lawmaker in this respect is most explicit in shaping of the so-called legal definitions or binding interpretative directives, which may be treated as directives of a particular legal language.

Thirdly, there is a difference between the diffusion of legal language and everyday language in a given society, which is not easy to state clearly. The matter is difficult but it has some importance in the field of interpretation and is closely related to the important theoretical question: to whom legal norms are directed and consequently: what requirements of communicability they ought to have.

This is, of course, not a complete enumeration of the peculiarities of legal language in relation to everyday language, but it is sufficient to point out the main difficulty of the problem, whether legal or everyday language is the universe of discourse in legal interpretation. The most obvious answer is that it is the utterances of legal language that we have to deal with in legal interpretation, but in theories of legal interpretation we have several conflicting views whether to construe a statute in terms of common, everyday meanings or special, technical meanings. But, despite this uncertainty, there is one characteristic of legal language that is not at all questioned. In that language there is no room for any ambiguity or vagueness that would be absolutely undecidable. To explain that assertion we have to pass to the problems of the ambiguity of legal norms in legal interpretation.

4. The meaning (or meanings) of a given expression in any language is relative to the directives of meaning of that language. Since these directives in everyday language are not clearly stated, but rather intuitively felt, it is not easy to formulate them in a more precise way than in our presentation of the directives of sense. In everyday language there is nothing to worry about because of the «situational» use of most of the utterances of that language. The expressions of everyday language are, as a rule, vague and ambiguous, when treated abstractly, without reference to context. But expressions of everyday language when considered in concrete situations are less ambiguous and or vague to a degree which practically ensures a level of communicability sufficient in everyday life.

The fact of the use of everyday language in common life situations, where the language would be changed so as to fit the needs of the everyday processes of exchanging information and influencing human behavior is the proof of the assertions put forth above. That feature of everyday language is, however, not sufficient to ensure the degree of precision needed in particular areas of human activity and this raises the need for «special» languages just mentioned.

The state organ has to decide a concrete case in due forms of legal procedure. Our considerations are based on the statutory law scheme and, therefore, we can say that a state organ has to apply a valid legal norm to decide the case. Let us assume that we have a set of facts treated as proven without reasonable doubt, and the question is what, if any, legal consequences are to be attached to these facts. We have, therefore, on one hand the more or less complicated fact-situation, and the valid law-norms on the other. To decide a case according to our model, it is necessary and sufficient to find the norms which regulate the fact-situation in question and draw from them the legal consequences which must follow from that fact-situation according to law. These legal consequences may be defined in terms of legal norms as an area of various possibilities among which the law-applying organ has to choose the appropriate one (e.g. various kinds of penalty for depriving a person of his liberty as various prison terms), but it has no relevance for the discussion of legal interpretation. For our purposes the problem is how to find a legal norm that «fits» a given fact-situation.

The law-applying organ may find a legal norm (or legal norms) which «immediately» fits the fact-situation in question, that is the norm (or norms) which covers that situation. The «immediacy» of the correspondence between the norm and fact-situation is common occurence in law, although its relevance is often obscured by the apparent simplicity of that occurence and by the preoccupation of legal theory with doubtful cases. Let us treat the latter cases later, and now let us briefly describe the occurence of situations in which we have an immediate correspondence of norms and fact-situations regulated by these norms.

Legal norms, as a rule, are formulated in such a way, that they fit immediately average or standard fact-situations occuring in a given society. Cases of doubt as to whether a given norm immediately fits a fact-situation in question are relatively rare occurences, but they have come into light of scientific discussions because they form the chief task in the work of judicial appellation and/or revision, involving courts of higher levels, more complicated tech-

niques of legal reasoning and, especially, legal interpretation. It is no wonder that the ignoring of the class of «simple» cases gives rise to an atmosphere of great uncertainty about the law as a whole, since the whole of law is treated as being a field for legal interpretation. And, in addition to that, cases immediately fitting the norm are not analyzed and the very existence of them is neglected.

The immediate correspondence of norm and fact-situation occurs more frequently when the law is better adapted to «life» in general and is formulated on the appropriate technical level. It is, of course, not possible, that law could be formulated in such a way as to exclude the possibility of doubt as to whether certain norms fit or do not fit fact-situations. The inconstant relationship between changes in the law and changes in social «life» regulated through that law and the occurrence of non-typical situations, the conflict of valuations included in law and those performed within law-applying activities, are the most obvious reasons for this. But this immediate fitness of a norm to decide a standard case is the necessary basis for normal success in the functioning of any legal system, and an increase in the number of fact-situations giving rise to doubts and, therefore, to the need for legal interpretation, is one of the signs that something has gone wrong in the law area.

To state that a given fact-situation fits the norm, and *vice versa*, it is necessary that the case should be within the scope of standard cases regulated with the norm (or norms) in question. Since the norm to be applied has to be understood, it is necessary that there should be some ways of understanding legal norms which, as a rule, are not subject to doubts. It seems that these rules are some elementary directives of legal language so implicit in our understanding of the law-stuff, that they are not specified in any way — that gives a feeling of immediacy of understanding. This is a well known fact in the understanding of everyday language, when anybody using that language immediately understands it in average situations without performing any rationalized analyses of semantic and syntactical rules. Only in not typical situations are there some doubts as to the meaning of utterances in everyday language, and thus it is necessary to use some techniques for fixing their meaning.

Returning to the immediate understanding of legal norms we have to stress the fact, that for such understanding it is necessary that the law-applying organ should have no doubt about the meaning of the norm in question, which involves some valuation. It is always

possible to say that there are some doubts even in the so-called standard cases. In such a situation it is necessary to fix the meaning of that norm, using explicitly some rules of legal interpretation. And when and only when such doubt arises is there a need for legal interpretation, that is for fixing the meaning of the legal norm to such a degree as to enable a decision to be made in a particular fact-situation.

When there is a doubt as to the finding of a legal norm that fits the fact-situation in question we can have, roughly speaking, two situations: firstly, there can be a norm that is ambiguous and/or vague to such a degree that it is doubtful whether it can be used to decide the case in question; secondly, there can apparently be no norm as understood in an immediate manner, that fits the case.

Let us consider the cases of vagueness and ambiguity of legal norms. The norm is vague, if there is some doubt whether the fact-situation in question is or is not included within the sphere of its regulation. We may put it most easily by using the picture of the hard core and penumbra doctrine of meaning ([10]). If the fact-situation lies within the hard core or clearly outside of it and is, therefore, an example of a standard case, then we have the situation requiring, as a rule, no interpretation at all, because there is no doubt about the correspondence of that norm with the given fact-situation. But, if the situation lies in the area of penumbra then it is doubtful whether to include it within the sphere regulated by that norm or to exclude it, as are the fact-situations qualified as being clearly outside that sphere (that is not only outside the hard core but even the penumbral area).

An expression is called ambiguous when it has more than one meaning. A norm may be ambiguous, but not vague, if each of the conflicting meanings has clear-cut limits. The classical distinction between ambiguity and vagueness may be, however, omitted here, if we consider the norm in question in relation to the particular fact-situation and not *in abstracto*. If the norm is vague in respect to that fact-situation the question is whether it has a meaning according to which it fits that situation, or a meaning with which

([10]) Compare for this theory of meaning works by H. L. A. HART, *Positivism and the Separation of Law and Morals*, 71 Harvard Law Review (1958), p. 607-615; *Analytical Jurisprudence in Mid- Twentieth Century: A Reply to Professor Bodenheimer*, 105 University of Pennsylvania Law Review (1957), p. 953-971; *The Concept of Law*, Oxford 1961, p. 15, 119, 123 and seq., 150, 210.

it does not fit it. The same is true, when the norm is ambiguous in respect to that fact-situation if with one meaning it fits the case but with another it does not.

The second of the situations mentioned above is that of the apparent lack of any valid norm regulating the case in question. In that situation there are two ways open to the law-applying activity, that is either stating that a given fact-situation has not any legal consequences at all and deciding the case in that way, or stating that there is some legal regulation not patent, because of some «gap» in law or vagueness of the valid legal norms. In practice in both cases the law-applying organ has to interpret the existing legal norms to demonstrate which solution is the «proper» one. We may put aside the very complicated question — perhaps obscured by legal speculation — of the so-called «gaps» in law where we have to deal with the vagueness and patent ambiguity of the very term «gap» and with the lack of a sufficiently clear conception of the law system. If someone assumes that there are «gaps» in law then, in his opinion, those «gaps» are to be filled by analogy treated either as a genuine interpretation or as a supplementary law-creating activity. Treated in the former way, analogy has several characteristics common to all interpretative activities, with some peculiarities we can omit in our present considerations. Treated in the latter way, it has to be excluded here, since we consider the questions of legal interpretation only. The problem of the vagueness of a legal norm, as a source of apparent lack of the legal norm fit to decide the case in question, for our purposes, may be generally reduced to the problems of the vagueness of the meaning of legal norm as explained above.

Summing up our discussion on the situation in which the law-applying organ has some doubts whether valid norms in their immediate understanding regulate the fact-situation in question, we can say that in all these situations, which are to be considered as an exception not as a rule in any legal system, the law-applying organ has to interpret legal norms so as to reach the meaning of the legal norm, sufficiently clearly to decide a given case.

In the law-field there is no possibility for the law-applying organ to state that the case is undecidable because of the ambiguity, vagueness or simply lack of a legal norm that fits the case. There must be a decision and the deficiencies of the law-stuff are not an excuse. There is a normative duty to decide the case and, therefore, a duty to fix a meaning for the legal norm in question even when it is not possible to find it with purely linguistic tools of syntactical

and semantic analysis. This necessity of decision explains the peculiarities of legal interpretation in contrast with other ways of understanding linguistic expressions.

If this is so, then these implicit directives of legal language, with which a norm can be immediately understood as fitting that or other fact-situation, are not sufficient to solve the problems of some fact-situations and thus we have to seek a decision with the help of special kinds of directives for fixing the meaning of vague (and ambiguous and apparently lacking) legal norms.

III.

1. Two sets of semantical rules play a part in the understanding of legal norms: (a) rules concerning the immediate understanding of a legal norm, and (b) rules of legal interpretation.

Rules about the immediate understanding of legal norms are no more explicit than rules of everyday language of that kind. The analysis of everyday language is still far behind what is needed to explain its contents and operation. It is easier to construe various artificial languages such as those of the formalized calculi of various deductive systems, than to make explicit the rules underlying the use of everyday language with all its uncertainties and lack of preciseness. Yet, in spite of that drawback, we use the everyday language freely and it functions sufficiently well for ordinary transfer of information in the universe of discourse of daily affairs. The same can be said about the rules of immediate understanding in legal language which lies «between» everyday language and artificial languages, closer perhaps to the former than to the latter. It is difficult to formulate these rules, but the understanding of legal norms raising no doubts is the empirical proof of the existence of such kinds of semantic rules in legal language, which are «built in» in the legal ways of thinking through legal education and tradition

A legal norm has some meaning within that kind of rules governing legal language, but the meaning may not be sufficient for the purpose of deciding a concrete case. It may not be sufficiently clear in respect to that case for many reasons, from its vagueness to the feeling that the norm taken in its immediate meaning may lead to an unjust or purposeless decision. The reason put forward as the basis for doubting the reasonableness of immediate understanding are determined by many factors, among which the most prominent part is played on one side by the differing quality of applied legal

norms, and on the other by the non-typical character of the fact-situation in question coupled with the divergence between the valuations embedded in that norm, and those of the interpreter.

The immediate understanding of a legal norm is, as a rule, sufficient in the great majority of cases. But if there is doubt as to the meaning of the norm applied to a given case, there is a necessity either to rationalize the meaning grasped immediately or to seek that meaning with the help of other rules. These rules are called directives of legal interpretation which form, as we have said before, the core of the normative theories of legal interpretation.

Directives of legal interpretation are known from ancient times. In European jurisprudence the most popular and typical example of those are Latin maxims, but contemporary theories of legal interpretation have added to that traditional set many additional directives of various kinds. We cannot make a critical inventory either of all that has been said about these directives or of these directives themselves, although it may be interesting from the historical and comparative point of view. Let us briefly outline our own approach to the directives of interpretation.

2. The meaning of any expression in any language depends on rules of sense, valid in that language. In any non-artificial language the great majority of expressions are ambiguous and they have some degree of vagueness, but in spite of those characteristics the use of such expression is not hampered by the lack of one precise meaning. It must be explained by the contextual approach made by men using language. Many expressions taken *in abstracto,* without any reference to the context of their use are very ambiguous and/or vague, but put into the context of their use in a given situation they are precise enough to convey information as intended, within a given universe of discourse. As was shown above, legal language has certain characteristics of everyday language and certain of artificial language. It is because of its affinity with everyday language that we have to deal with the interpretation using contextual approach.

It is asserted here, that the meaning of a legal norm has to be sought through its analysis in the context of its occurrence. We can distinguish three types of contexts of the legal norm: linguistic, systemic and functional. The classification of context is the basis for the grouping of the directives of legal interpretation into three corresponding classes.

The linguistic context of a legal norm is the context of the given legal language as used in the particular legal system or a

part of it. The legal norm is expressed in that kind of language and, therefore, all rules governing the use of expressions in that language are to be considered when ascertaining the meaning of a legal norm. Here we have to deal with the vocabulary of that language, syntactical and semantical rules and expecially with the so-called «legal definitions», that is with binding legislative declarations as to the meaning of some expressions within a legal language or a part of it. We have also to deal with the relations of meaning of univocal terms in legal and everyday language, the uniformity of meanings of expressions in various parts of a given legal system and so on.

Using all the available knowledge of a legal language we are not always able to make the meaning of a legal norm precise enough for the purpose of deciding a given case. The norm can be ambiguous and/or vague in the context of legal language.

A legal norm is always a part of a larger group of norms forming the legal system. The legal system as the set of norms valid at a given time in a given state exerts some influence on the meaning of a legal norm because of the elementary characteristics of any legal system. A legal system has to certain extent two characteristics: consistency and wholeness.

Some degree of consistency means that, as a rule, there are no contradictory norms within that system and, hence, we have to interpret legal norms so as not to introduce such incompatibilities. The matter cannot be treated here in more detail, but we must mention that there are many kinds of contradictions in legal system, and only some of them are relevant for legal interpretation while others are to be treated in the legislative and not interpretative activity.

Wholeness, as a characteristic of legal systems, is a matter of violent disagreement in jurisprudence. We have two extreme opposites of opinion: one is the assertion that a legal system is not immune to various kinds of so-called «gaps» and that the interpreter has to fill these by various processes of analogy, performing a creative task. According to this kind of thinking there are «gaps» in law and the whole «outside-the-law sphere» and in each area the law-applying organ has to step in as an aid to the legislator. The relevance of such an assertion for our problems of interpretation is obvious since the interpretative process then becomes to a great extent a law-creating activity. That is patent especially when someone asserts that we have to deal with a «gap» even if there is some norm regulating the fact-situation in question, but in the

opinion of the interpreter that regulation offends his legal sense, feelings of justice and so on ([11]).

The other thesis is, that the legal system forms a whole in which there is a solution for any fact-situation and if there are «gaps», they are only apparent «gaps» and we can make the situation clear by genuine interpretative methods.

From both points of view it is clear, however, that the interpreter has to take into account the other norms of the legal system when proceeding to fill up apparent or real «gaps» in this system.

In any statutory law system there is a hierarchy of norms influencing the interpretative activity. It is commonly assumed that the norm of a lower level has to be interpreted in accordance with the acknowledged meaning of the norm of a higher level if there is some link of content between one and the other. To this question belongs a very widely discussed problem as to the so-called general principles of law as the basic principles of a legal system, hierarchically placed at the top of the whole system ([12]).

In any legal system there is a grouping of law norms into different «parts» or «branches» of the system, such as criminal law, procedure, family law and so on, although we see great differences between various law systems, especially between the continental statutory law classification and the Anglo-American common-law. In each classification, however, we can see that the norms belonging to one «branch» influence the meaning of any norm belonging to it more strongly than norms outside that «branch», perhaps with the exception of the principles of the whole system of law.

And, finally, in statutory law there is some influence of the arrangement of norms into groups in a given statute (e.g. under «parts», «titles», «chapters» an so on) exerted on the fixing of the meaning of a given norm. The interpreter often seeks aid in that arrangement, although, as is almost universally assumed, it is not a binding matter.

Summing up we may say that the systemic context of a legal norm influences the interpretation of it and, therefore, we may distinguish

([11]) E.g. H. KANTOROWICZ, *Der Kampf um die Rechtswissenschaft,* Heidelberg, 1906, p. 41 and *passim;* H. REICHEL, *Gesetz und Richterspruch,* Zürich 1915, p. 142 and seq., 151 and seq. G. COHN, *Existenzialismus und Rechtswissenschaft,* Basel 1955, p. 87.

([12]) J. WROBLEWSKI, *The General Principles of Law,* from Rapports polonais présentés au Sixième Congres International de Droit Comparé, Varsovie 1962, p. 218 and seq.

the whole set of directives of interpretation prescribing how to use that influence in the interpretative activity.

The last context, the functional one, is the most complicated and the least precise, in comparison with those above mentioned. It is, roughly speaking, the total social situation from the time of enacting and/or applying the norm in question which includes all relevant social relations, social valuations and norms forming the ideological context, and functions of that norm and related norms, and goals of the norm, as assumed by the lawmaker and/or the interpreter. There is no agreement as to what kind of factors form the functional context and to what extent they influence the meaning of interpreted legal norms.

It is beyond any dispute, however, that such an influence exists. Discussions as to whether the legislative intent or the intent of the statute «itself» should be taken into account in its application provide the most obvious example that the opinion that some elements of functional context are to be taken into account is commonly held. But, the question is which of them are relevant.

In contrast to the directives related to linguistic and systemic context, the functional directives are controversial to such a degree that it is not possible to list even some of them in a manner acceptable to all the conflicting views. Let us, therefore, drop this topic here and return to it when speaking about various normative theories of legal interpretation.

We have, then, a linguistic, a systemic and a functional set of directives of interpretation, and applying them we seek to fix the meaning of the legal norm in question. The meaning of a legal norm is relative to the directives used to assign that meaning. We have, then, for the norm that does not need interpretation, the general directives of sense, for others norms — three sets of the above mentioned directives of interpretation.

The practice of interpretation shows, however, that the question of the use of the three sets of directives is more complicated. The interpreter has to decide the two questions: (a) when one has to use each set of the directives of interpretation, and (b) what to do, if the norm has various meanings according to the various sets of directives used ?

The first question is important if a norm has a meaning precise enough to decide the fact-situation in question. The latin maxim *interpretatio cessat in claris* is an example of an interpretative directive of a higher level than that of linguistic, sytemic and functional ones. But it is not true that all interpreters comply with that

maxim, because in some theories there is a requirement to test the results of the application of any set of interpretative directives with the application of the remaining ones.

The second question is essential since the results of such a test may lead to two consequences: either the meaning of the norm in question is the same according to various directives of interpretation or it is different. When the former is the case there is no problem at all; however when the latter is the case the interpreter has to deal with a norm that is ambiguous after the above-mentioned process of interpretation has been completed. As we have said above, the interpreter as the law-applying organ has to give his decision in spite of any insufficiencies in law-stuff. He has, hence, to choose one of the conflicting meanings of the legal norm and that choice is directed by appropriate directives telling him what to choose in such a situation.

We have, then, to introduce the notion of the interpretative directives of the second level prescribing the use and the relevance attached to the directives of the first level, that is to the linguistic, systemic and functional directives. The confusion of the two levels of interpretative directives in contemporary theories of legal interpretation is patent, but as we have seen, that distinction is necessary when we approach the matters of legal interpretation from the semantic point of view, that is from the proper point of view.

The meaning of legal norms is relative to two sets of directives: rules of immediate understanding and directives concerning legal interpretation of the two levels. The fact of relativity of meaning is common to all expressions in any language, since it is the consequence of the elementary structure of any language. But the relativity of meaning of legal norms has one additional feature, namely that the directives of legal interpretation are to a higher degree a matter of choice than those of legal (or any other) language.

Directives of meaning in everyday language are sometimes hard to formulate but they are given and are used implicitly by all persons using that language. If there is some vagueness and/or ambiguity then the contextual approach provides a chance to clear up the situation and there is always a possibility of stating, that a given expression is ambiguous and/or vague. In legal language there is no possibility, at least for the law-applying organ, to state that ambiguity and/or vagueness exists to such a degree as to render the decision in a concrete case not definite. The law in a given case has to be clear and unambiguous in spite of all deficiencies of meaning of the norms in question. It is commonly known fact, that there are

many conflicting interpretative directives sometimes leading in opposite directions. We have, hence, to put the question what are the grounds for choice of the directives of legal interpretation ?

3. As was said above, directives of legal interpretation are grouped in normative theories of legal interpretation. The mere superficial review of all those theories shows clearly that there are many incompatibilities between them, and that a given norm, interpreted with the interpretative directives included in various normative theories, may have different meanings. The explanation of that variety of meanings is obvious since the meaning is relative to the assumed directives of interpretation. The analysis of various normative theories of legal interpretation shows that they can be grouped into two large sets according to the basic values they assume ([13]).

One group of normative theories of legal interpretation assert that the meaning of an interpreted norm is constant as long as it is not changed explicitly in appropriate action by the normgiving authority. The stability of meaning is conceived as an essential element in assuring legal security, stability and certainty in the application of law. The theoretical construction, hence, seeks to find such characteristics of meaning of a legal norm and ways of fixing that meaning as will assure those values. The easiest construction is to find that meaning in the «will of the historical legislator». That will is a kind of historical and psychological fact and, as all facts, is given for ever. We can not mention here all the criticism directed against such a construction from the theoretical point of view. The only explanation of its evident deficiencies is, that it was thought of not as a theoretically sound construction but as a means of assuring the stability of the meaning of legal norms. This group of normative theories of legal interpretation we term «static theories» since the meaning of legal norm is considered as something static.

The second group of normative theories of legal interpretation we propose to call «dynamic theories» because according to them the meaning of a legal norm changes without any interference from the lawmaker. The legal norm enacted lives its own life and adapts itself to the changing circumstances of its functional context. With such a construction of the meaning of the legal norms these theories assume the basic value as a goal for legal interpretation, which may

([13]) Compare J. Wroblewski, *The Relativity of Juridical Concepts*, Oesterreichische Zeitschrift fur öffentliches Recht 1960 (X), p. 278 and seq. J. Wroblewski, *Zagadnienia... op.cit.*, p. 151-193.

be described as the maximum adequacy of law to «life». The law has to adapt itself to the changing situations and valuations without altering the «letter of the law» and the task of the interpreter is to do his best in that direction. Theoretical constructions for that conception are various constructs such as the «will of the norm», «the will of the actual lawgiver» and so on.

Each group of normative theories of legal interpretation determines to a great extent the choice of interpretative directives. Roughly speaking, the static theories attach a lot of importance to linguistic and systemic directives and use teleological interpretation rather than functional ones based on the *ratio legis* of the historical lawgiver. Dynamic theories put forward functional directives obtaining a greater elasticity of meanings for legal norms needing interpretation. It is obvious that the result of interpreting a particular legal norm using interpretative directives from the two kinds of normative theories of legal interpretation may lead to different results, especially when the interpreted legal norm was enacted in a period when a social situation was radically different from that, in which the norm is interpreted and applied.

What are the conditions for choosing static or dynamic theories of legal interpretation? Broadly speaking it seems that the chief reason is the feeling of tension between the «letter of law» and the requirements of «life» as valued by the interpreter in the context of a given social situation and the institutional framework of the interpreter's activity. That explains why the same interpreter sometimes uses various tools of interpretation. If the legal norm in question is not, in the opinion of the interpreter, in conflict with the given social context situation, he may use all the tools of static theories including the preparatory materials of the legislative process. If that norm in his opinion is in such a conflict, he is prone to use dynamic theories underlining the role of functional directives.

The role of the interpreter is very important in the application of law, but we must remember, that his activity, as a whole, concerns only a relatively small proportion of cases since the average legal norms are sufficiently clear to be applied without interpretation to the standard or typical fact-situations ([14]).

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([14]) The views expressed in the present article were announced in the author's abstract «*Semantics as Applied to Legal Interpretation*», International Congress for Logic, Methodology and Philosophy of Science, Abstracts of Contributed Papers, Stanford University, California 1960, p. 144-145.