

## **The Institutional Turn in Contemporary Theories of Legal Interpretation**

Classical doctrines of legal interpretation emphasise a set of rules that supposedly have/should have crucial influence in the ascription of meaning to legal texts. In most legal systems those rules are informal, not part of the valid law, but are still used by the judges in the justification of decisions about the meaning of legal texts. A new generation of legal philosophers of different philosophical backgrounds and different standpoints in legal philosophy, in contrast with the tradition, emphasises the importance of institutions and institutional arrangements for the practice of legal interpretation.

Cass Sunstein and Adrian Vermeule have analysed legal interpretation from the perspective of contemporary behavioural psychology taking the position that any analysis of legal interpretation should take into account the institutional frame and the systemic effects of the ascriptions of meaning. Their criticism of traditional accounts of legal interpretation that have been obsessed with semantics has had significant influence in legal philosophy and gave rise to like-minded theories.

One of the offsprings of the institutional turn was Scott Shapiro's idea that the choice of interpretative methodology is the main task of the authoritative interpreter of law. This choice is not random but is based on the relations of trust within a legal system. The economy of trust is, within the system, institutional established by legal rules. This account of interpretation mediates, according to Shapiro, between formalist and antiformalist ideologies of interpretation by taking into account the fact that the discretion of an authoritative interpreter of law is dependent on the economy of trust that the legal system embodies.

Two more accounts of interpretation that also take the institutional standpoint are those of Jeremy Waldron and Victoria Nourse. Both Waldron and Nourse, in spite of different philosophical starting points, claim that the basic normative directive for a legal interpreter in contemporary democracies is that she should take into account the legislative procedures that do not become law, but without which no law could be made.

Finally, William Baude and Stephen E. Sachs have put forward the so called hyperpositivist theory of legal interpretation whose central claim is that most interpretative problems are answerable from the perspective of valid law. Every legal system contains mechanisms for the resolution of problems that interpreters face, in such a way that it can be claimed that the rules of interpretation used within a legal system, no matter their source, are a part of the valid law.

The exposition of the mentioned theories will be done in order to critically assess whether the institutional turn furthers our understanding of legal interpretation, gives normative guidelines that are in any way more grounded than the guidelines in the classical hermeneutical tradition that made its way into legal philosophy thanks to Savigny and Lieber. Finally, the author will suggest modifications of these institutional accounts of interpretation that could have the potential to make the institutional turn in legal interpretation more fertile for our understanding of law, and for the formulation of normative guidelines for authoritative interpreters of law.