

## INTERPRETATION – AN EXACT ART

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### A. What is interpretation?

- (1) Re-formulating obscurity (*obscurum per obscurius*). Disintegration of the text. Re-wording (Jakobson).
- (2) Discovering what is not said in what is said (the hermeneutic voice).
- (3) Imposing the will of the interpreter on the text ('the meaning'; Jerome: *iure victoris*).

### B. Moulding the infinite malleability of the clay of language. Linguistic indeterminacy.

Meaning of meaning (Ogden & Richards). *Meaning* as an arc of potentiality. Words as tools (Wittgenstein).

Treaty, written constitution, legislation, judicial decision, contract, canonical scholarly text, religious text, historical document. *A living process*, not a thing. Being read is a becoming. Biography of a text.

**Special case:** treaty. A disagreement reduced to writing. Form of words. *Ad quidquid*. Life-history of a treaty. Discussing, proposing, convening, negotiating, drafting, adopting, ratifying, implementing, interpreting, applying (parties, third parties), interpreting the applications...

'from territories...' UNSC Res. 242 (1967). Three hidden 'meanings'.  
'Freedom of the high seas...comprises, *inter alia*...' UNCLOS, Art. 87. Contradiction? ('*Elle comporte notamment*').  
'The context for the purpose of the interpretation of a treaty shall comprise...' Vienna, Art. 31 ('*le contexte comprend*').  
'any enactment passed *or to be passed* shall have effect ...' EC's Act 1972, sec. 2. Four words = Glorious Revolution 2.

### C. The *interdependent moments* of interpretation. Catching hold of the moving text.

Programmatic = interpreting words in *making* the text – creative ambiguity; deception; error.

Prevenient = interpreting the text to exercise *influence* over its future interpretation (political, religious, academic, arguing, advising, preaching, teaching, selling). Mediation: author → audience.

Pragmatic = interpreting the text to *apply* it authoritatively – judiciary, priesthood, government, public opinion.

*Moment* (physics): a turning effect produced by a force acting on an object. *Das Moment* (Hegel).

### D. Deontology of interpretation. Restraining mere prejudice. Limiting the arc of meaning. Humpty Dumpty.

**Constraints** – 'exact art' (Steiner), general rationality, author-ity (*Verstehen*, Dilthey), author's intention (useful fiction), inherited conglomerate (Murray), collective representation (Lévy-Bruhl), horizon (Husserl, Ricœur), con-text (Derrida), thought-world (Whorf), language community (Habermas), language game (Wittgenstein), legal rationality, rules and conventions, professional status and ethos, unequal social power.

**Special case:** interpreting unwritten law (customary law, Customary International Law, Common Law, *stare decisis*, 'jurisprudence'). Untext-law is provisionally conceived as *virtual or imperfect* (Vattel) text-law with a view to its interpretation *as such* (subject to the deontological constraints).

N.B. *Virtual or imperfect* law is not *law*; it is *heuristic* unless and until it becomes *law* within a legal system, and then (a) it becomes subject to interpretation *as law*, and (b) and it becomes liable to be included in the further making and interpreting of untext-law.