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AN EXPRESSIVIST RESPONSE TO THE INFINITE REGRESS OF INTERPRETATION ARGUMENT AGAINST LEGAL INTERPRETIVISM

EKSPRESYWISTYCZNA ODPOWIEDŹ NA ARGUMENT Z REGRESU W NIESKOŃCZONOŚĆ PRZECIWKO PRAWNEMU INTERPRETYWIZMOWI

The paper aims to address the Infinite Regress of Interpretation Argument against Legal Interpretivism by offering an expressivist defence. In this paper, Legal Interpretivism is understood as the view that determining the content of law requires interpreting its sources, where the correctness of interpretation depends on its alignment with the result of applying the proper method of interpretation to those sources. The Infinite Regress of Interpretation Argument posits that rules of interpretation necessitate further meta-rules for their application; these, in turn, necessitate further meta-meta rules, ad infinitum, rendering rules of interpretation incapable of grounding legal content. This line of reasoning leads to the conclusion that Legal Interpretivism ultimately collapses into a form of legal nihilism, suggesting that participants in legal discourse seeking to determine legal content are systematically in error. To counter this argument, the paper employs the division of linguistic labour thesis, which holds that the meaning of interpretive rules depends on what legal experts mean by them. Additionally, it utilizes a sceptical solution to the rule-following problem, suggesting that the function of meaning ascriptions is expressive rather than descriptive, which implies that meaning ascriptions do not require any foundational justifiers. Consequently, the paper argues that what legal experts mean by rules of interpretation halts the regress of interpretation. Ultimately, the paper concludes that by endorsing an expressivist stance, legal interpretivists can uphold their commitments without falling into legal nihilism.

Keywords: legal interpretation; expressivism; regress of interpretation; sceptical solution; division of linguistic labour

Celem niniejszego artykułu jest przedstawienie ekspresywistycznej odpowiedzi na argument z nieskończonego regresu interpretacyjnego przeciwko intepretywizmowi prawnemu. Interpretatywizm prawny jest rozumiany na gruncie niniejszego tekstu jako pogląd, zgodnie z którym identyfikacja treści prawnej wymaga interpretacji źródeł prawa, a poprawność interpretacji zależy od jej zgodności z rezultatem zastosowania właściwej metody interpretacji do źródeł prawa. Argument z nieskończonego regresu interpretacyjnego zakłada, że reguły interpretacyjne wymagają dalszych metareguł określających sposób ich zastosowania, a owe metareguły wymagają kolejnych

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metametareguł, i tak w nieskończoność, prowadząc do wniosku, że reguły interpretacyjne nie są w stanie zidentyfikować treści prawnej. To z kolei prowadzi do konkluzji, że interpretatywizm prawny ostatecznie przekształca się w formę nihilizmu prawnego, czyli twierdzenia, że uczestnicy dyskursu prawnego dążący do identyfikacji treści prawnej źródeł prawa są systematycznie w błędzie. Aby odeprzeć powyższy argument, artykuł odwołuje się do tezy o podziale pracy językowej, która zakłada, że znaczenie reguł interpretacyjnych zależy od tego, w jaki sposób są rozumiane przez ekspertów prawnych. Dodatkowo tekst wykorzystuje sceptyczne rozwiązanie problemu kierowania się regułą, sugerując, że funkcja zdań przypisujących rozumienie jest ekspresywna, a nie opisowa, co implikuje, że zdania przypisujące rozumienie nie wymagają żadnych fundamentalnych uzasadnień. Na tej podstawie autor argumentuje, że to, w jaki sposób eksperci prawni rozumieją reguły interpretacyjne, zatrzymuje regres interpretacyjny. Ostatecznie artykuł prowadzi do konkluzji, że przez przyjęcie stanowiska ekspresywistycznego interpretatywiści prawni mogą utrzymać swoje zobowiązania bez popadania w nihilizm prawny.

Słowa kluczowe: interpretacja prawa; ekspresywizm; regres interpretacyjny; rozwiązanie sceptyczne; podział pracy językowej

I. INTRODUCTION

This paper addresses the alleged vulnerability of Legal Interpretivism to the Infinite Regress of Interpretation Argument (hereinafter: the regress argument). By 'legal interpretivism,' I refer to the position that: 1) determining legal content requires interpreting the sources of law, and 2) an interpretation identifies legal content correctly if it aligns with the result of applying the proper method of interpretation to the sources of law (MacCormick, 2005; Patterson, 1993; Raz, 2009; Spaak, 2003; Sunstein, 1989; Zieliński, 2008). The regress argument, in turn, contends that legal interpretivism leads to an infinite regress, since the rules of interpretation themselves, in order to identify legal content, require further meta-rules to guide their application, and so on, *ad infinitum* (Charny, 1991; D'Amato, 1989; Fish, 1984; Hart, 1994; Molina, 2018, 2020). Thus, the argument claims, legal interpretivism collapses into an untenable form of legal nihilism – namely, the claim that participants in legal discourse who attempt to determine legal content are systematically in error.

I will argue that by endorsing an expressivist stance toward the content of rules of interpretation based on the division of linguistic labour (the idea that the meaning of specialized terms depends on the usage of experts) and a sceptical solution to Wittgenstein's rule-following problem (which holds that the function of meaning ascriptions is expressive rather than descriptive), legal interpretivists can avoid the regress while upholding their core commitments. In particular, by adopting an expressivist view, the legal interpretivist can maintain that the regress is halted by what legal experts mean by the rules of interpretation, without requiring any further justification.

The legal interpretivist view itself resonates with common ideas about the nature of legal practice. As Ronald Dworkin (1994) memorably notes, 'Even when lawyers agree about what we might call the ordinary historical facts of the matter … they may still disagree about what the law is' (p. 464). For the

interpretivist, this is because determining the content of law always requires interpretation – the law is not simply identical with the source texts. In turn, methods of interpretation are meant to provide a way to resolve these disputes and avoid interpretive anarchy.

However, not all theorists accept the interpretivist view. Critics like Frederick Schauer (2002, pp. 53–76, 207–228) and Andrei Marmor (2005, pp. 112–118) argue that interpretation is an exception to the standard way of understanding language. In their view, the infinite regress of interpretation reveals a fundamental flaw in legal interpretivism.

The paper proceeds as follows. In section I, I discuss the main features of legal interpretivism. Section II reconstructs the regress argument against it. Sections III and IV develop an expressivist response based on the division of linguistic labour and Saul Kripke's (1982) sceptical solution. In section V, I demonstrate how this solution helps legal interpretivists refute the regress argument. In doing so, the paper offers a novel way for legal interpretivists to defuse a powerful challenge to their view while still preserving their core commitments about the central role of interpretation in legal reasoning. More broadly, the paper seeks to advance our understanding of the role of interpretation in law and to open up new, expressivist lines of argument in long-running debates between interpretivists and their critics.

II. LEGAL INTERPRETIVISM

The problem of legal interpretation is one of the enduring topics in legal philosophy. To understand the term 'legal interpretation', it is helpful to refer to the distinction between sources of law and the law itself (Gray, 1921).[1] While the law consists of 'the general rules which are followed by its judicial department in establishing legal rights and duties' (Gray, 1921, p. 1), the sources of law include acts of legislation, judicial precedents, opinions of experts, customs, and principles of morality (Gray, 1921, p. 124).

Some scholars, known as non-interpretivists, argue that identifying the legal content of the sources of law does not require interpretation (see Marmor, 2005, 2014; Stone, 1995; Schauer, 2002). For example, Marmor suggests that interpretation is not a prerequisite for understanding; rather, understanding is a prerequisite for interpretation. On this basis, Marmor (2005, p. 93, 2014, pp. 108–109) states that law, like any other form of communication, can simply be understood, and then applied. That is, interpretation is the exceptional, not the standard mode of understanding law. Nevertheless, interpretivists argue that this stance is flawed. They argue that legal language often differs from ordinary language – that a common mistake is assuming that words commonly used in everyday language, such as 'rights', 'duties', 'malice', 'in-

[1] A similar approach to understanding the term 'interpretation' is endorsed by Joseph Raz (2009, p. 223).

tent', and 'negligence', have the same meaning when used in legal contexts (Holmes, 1897). The legal meaning of a text seems, then, to be not merely a function of the words themselves – it should rather be associated with legal interpretation (cf. Sunstein, 1989, pp. 416–417).

It is noteworthy that the notion 'legal interpretation' itself is ambiguous, referring to both the activity of interpreting (*interpretation-activity*) and the outcome reached through that activity (*interpretation-outcome*; Chiassoni, 2019, p. 18; cf. Moore, 1995, p. 2). Interpretation-activity can be understood in a broad sense, referring to any kind of 'explanation', 'understanding', or 'theorizing' – for example, when a scientist looks through a microscope, we could say that she is trying to interpret what she sees. Here, and in many other cases, 'interpretation' and 'explanation' are used interchangeably. However, musicians discussing how to perform a Mozart sonata would not typically be said to be arguing over the explanation of the sonata or of Mozart himself – their argument is distinctly interpretive (cf. Marmor, 2005, p. 9). Legal interpretivists focus on this narrower sense, whereby the word 'interpretation' is used to designate a unique type of reasoning or understanding. Thus, in this paper, I characterize interpretation, in this narrow sense, as an inherently inferential process. Consequently, the question 'why interpret?' is regarded as a question about the role of our inferential capacities in our understanding of the sources of law. In this regard, legal interpretivists are regarded as endorsing the view that access to legal content – the answer to what is true as a matter of law – requires an inferential transition from sources of law to the law, whereas non-interpretivists are regarded as denying that such an inferential step is necessary.

Legal interpretivists can be further divided into global and local interpretivists. Global interpretivists endorse the claim that our understanding of the sources of law requires interpretation, because all understanding *as such* requires interpretation. In order to justify their position, they may refer to hermeneutics, deconstruction, and related theories. Local interpretivists, in turn, argue that the need for interpretation follows from the characteristic features of the legal domain. This distinction is important because it shows that legal interpretivists need not commit to controversial claims about the nature of human understanding in general.[2]

When it comes to interpretation-outcome, the key question is how to determine which interpretation of a legal source is correct, given that multiple interpretations are often possible. To answer this question, interpretivists may appeal to theories of legal reasoning, such as those developed by Wróblewski (1971) and Patterson (2001). While discussing the elements of the justification of legal decisions in a theoretical model, Wróblewski (1971, pp. 413–415) singled out three kinds of judicial decisions: (1) the *final decision* that determines the consequences of the proved facts of the case according to the dispositions of the applied legal norm; (2) the *interpretative decision* that determines the meaning of the applied legal norm; and (3) the *decision of evidence* stating

[2] I believe that a similar position was endorsed by Dennis Patterson (1993).

that the fact of a case has taken place. Regarding interpretative decisions, Wróblewski argues that the determination of the meaning of the norm hinges on interpretative directives as rules regulating how one has to seek the 'true' meaning of a norm. Moreover, we may draw upon Patterson's (2001) argumentative framework for legal discourse. Patterson argues that all texts, especially legal texts, must be properly construed. The way we give meaning to legal texts is with *Backings*. Backings are the ways in which we attribute meaning to sources of law. However, in order to establish the most appropriate interpretation of the text under discussion, it is necessary for the judge to rank and harmonize these backings. The methods of interpretation developed by legal theorists seemingly aid this task (Solum, 2010, pp. 100–108).

Based on the above considerations, I adopt a minimal definition of legal interpretivism based on two core commitments: (1) that identifying legal content in relation to the sources of law necessitates interpreting these sources; (2) that an interpretation identifies legal content correctly if it aligns with the result of applying the proper method of interpretation to the sources of law. While the first commitment is related to interpretation-activity, the second relates to the interpretation-outcome. Most importantly, this minimal approach is actually a strength, not a weakness, because it allows the solution to apply broadly across different interpretivist theories, as it addresses the fundamental problem of how rules of interpretation (as the most plausible exemplifications of criteria of correctness for legal interpretation) can have determinate content at all, without becoming encumbered by specific theoretical commitments concerning, for example, the proper role of moral or pragmatic factors in legal interpretation, or the scope of interpretive discretion.[3]

III. THE REGRESS ARGUMENT

Regress arguments are widely used in philosophy. A classic example is Agrippa's trilemma. Suppose that, in the course of the conversation, *S* claims that *q*. Given the crucial epistemological distinction between knowing (or being justified in believing) that *q* and merely assuming (or being of the opinion) that *q*, it seems reasonable to ask *S* what justifies her in thinking that hers is a case of one rather than the other. Suppose that *S* now offers some evidence r_1 for her original claim; given the aforementioned distinction, it seems reasonable to ask if r_1 is itself something that she knows or whether she is merely assuming its truth. If this elicits a further source of evidence, r_2, the same question can be repeated (for the same reason). In this way, the demand for

[3] Following Chiassoni (2019, p. 127), by *interpretive discretion* I mean the discretionary power to choose between two or more reasonable alternatives concerning the legally correct 'translation' of the legal provision. The minimal account of legal interpretivism that I adopt in this text does not imply any particular views on this matter – specifically, it does not aim to suggest that applying the proper method of interpretation to the sources of law results in one and only one interpretive outcome.

justification gets passed down along a line of justifying reasons ($q \Rightarrow r_1 \Rightarrow r_2 \Rightarrow r_3 \Rightarrow r_4 \Rightarrow r_5 \Rightarrow r_6 \Rightarrow \ldots$) that threatens to regress endlessly. On this basis, the sceptic states that knowing that q is impossible. Here are the three options that make up the trilemma (Coliva & Pritchard, 2022, p. 27):

i. Offer an infinite chain of reasons (*infinite regress*).
ii. Offer a reason in support of itself (*circularity*).
iii. Offer no reasons at all (*groundlessness*).

Wittgenstein raised a similar problem for rule-following. If understanding the content of an expression (that is, grasping its content) requires grasping the rule for its use (let's call it r_1), we can always raise the question of what constitutes the understanding of r_1. Now we can say that understanding r_1 requires grasping another rule (let's call it r_2) for its use as well. However, it now it seems that I need a further rule – r_3 – for understanding r_2. Consequently, we are again left with the trilemma of whether to offer an infinite chain of rules, to offer a rule in support of itself, or to offer no rules at all.

This kind of argument has been levelled against legal interpretivism – the view that identifying legal content requires interpreting the sources of law according to the proper method of interpretation. According to the regress argument, we cannot determine whether norm N results from the application of rules of interpretation belonging to the proper method of interpretation to the sources of law, because rules of interpretation belonging to methods of legal interpretation do not provide conclusive results for interpreting legal texts. The argument for this claim is that interpretive rules require further rules for their interpretation, and these subsequent rules require further rules for their interpretation, creating an endless chain that leads to an infinite regress. Given that it is not possible to provide such an infinite number of rules, this regress shows that we cannot attribute any meaning to rules of interpretation.

An influential version of this argument comes from Herbert L. A. Hart (1994, p. 126), who maintained that canons of interpretation, being general rules of language use, cannot eliminate interpretive uncertainty because they themselves must be interpreted. Hart supports his scepticism toward rules of interpretation by stating that while there may be easy cases where interpretive rules seem to apply automatically, without any problems, there will always be unfamiliar, problematic cases where there are reasons both for and against our use of a rule, and no firm convention or general agreement dictates its use (p. 126). Thus, Hart undermines the capacity of rules of interpretation to identify legal content by arguing that they cannot eliminate interpretive uncertainties because they themselves require interpretation as well, and cases of their application that may seem straightforward and not in need of interpretation are only a narrow slice of the reality with which judges must grapple.

Stanley Fish (1984) develops this argument further, claiming that all interpretive rules intended to 'constrain the interpreter,' must be available or readable independently of interpretation. Consequently, they must directly declare their own significance to any observer, regardless of their perspective. However, since rules themselves are formulated in textual form, they inher-

ently require interpretation and cannot serve as constraints on interpretation. This means that the rules endorsed by methods of interpretation do not offer a fixed or definitive meaning of legal texts and, consequently, are not capable of identifying the legal content of the sources of law.

According to Fish (1984), the regress argument extends to both specific and general rules of interpretation. Specific rules, which outline how to interpret particular elements, would presumably take a form such as: 'If someone takes the property of another without his consent, count that as larceny' (p. 1326). Fish notes that such rules often give rise to disputes and disagreements regarding their application or understanding, as there will always be disputes about whether the act is indeed a 'taking' or even about what a 'taking' is. And even where the fact of taking has been established to everyone's satisfaction, one can still argue that the result should be embezzlement or fraud rather than larceny.

Similarly, general rules that define basic concepts and the procedural circumstances under which the interpretation must occur, such as the instruction to consult history, can lead to conflicting interpretations about what qualifies as history, how historical information should be assessed, or what its factual configurations are (p. 1327). This vulnerability of interpretive rules to further interpretation makes them incapable of constituting constraints on the interpretive process and, consequently, incapable of identifying the legal content of the sources of law. It is noteworthy that Anthony D'Amato (1989, p. 562), Sebastián Reyes Molina (2018, 2020), and David Charny (1991), among others, adopt a similar line of thinking when it comes to the regress of interpretation.

Navigating through the regress argument, one might conclude that rules of interpretation are normatively inert. Such rules, for fulfilling the guidance role toward the interpretive process, need to have determinate content capable of guiding their application. Nonetheless, the regress argument shows that legal actors wishing to apply rules of interpretation face the aforementioned trilemma: offer an infinite chain of rules, offer a rule in support of itself, or offer no rules at all. None of these options seems to be satisfactory, which makes the identification of legal content impossible. This argument can be illustrated as follows:

(1) It is the law that *N*.
(2) For any norm *N*, if it is the law that *N*, then *N* requires a set of rules of interpretation *R* that determine that *N* results from the application of the rules of interpretation *R* to the sources of law *S*.
(3) For any norm N, if *N* requires rules of interpretation *R* that determine that *N* results from the application of *R* to *S*, then *N* results from the application of *R* to *S* only if there are further rules of interpretation *R*' that determine the content of *R*.
(4) For any norm *N*, the manner in which the further rules of interpretation are to be applied must first be determined in order to establish that *N* results from the application of *R* to *S*.
(C) If *N* requires the rules of interpretation *R* to determine that *N* results from the application of *R* to *S*, then *N* never actually results from the application of *R* to *S*.

In other words, the regress argument threatens to collapse legal interpretivism into a kind of global legal scepticism or nihilism stating that no norm can genuinely be regarded as law, thus implying that participants in legal discourse who attempt to identify the legal content of legal sources are systematically in error. Therefore, if the regress goes through, legal interpretivism appears to be a self-undermining theory.

IV. DIVISION OF LINGUISTIC LABOUR

The division of linguistic labour provides a promising way to halt the regress of interpretive rules. This idea, famously articulated by Hilary Putnam (1975), holds that in a great many situations of communication, speakers (or writers) use words whose meaning they only understand imperfectly. Yet, those very speakers usually also intend to use those words in the same sense as the other members of their linguistic community. In such cases, the use of such terms by these speakers depends on a structured cooperation between them and the speakers in the relevant subsets. In this regard, as Putnam (1975, pp. 143–144) notes, within a linguistic community, there is a difference in status between 'expert' speakers and 'nonexpert' speakers. Consequently, when nonexpert speakers use particular terms, they *defer* to the external bearers of meaning – the experts – and it is those experts' meanings that are contributed to the propositions they express, not the imperfect or incomplete meanings they have in mind. For instance, as Michael Ridge (2009, p. 188) notes, the vast majority of English speakers do not classify olives as fruits and do not intend to use 'is a fruit' to include olives. Yet the predicate 'is a fruit' does all the same include olives in its extension. This is perhaps because of a higher order norm trumping the conventional norm of deference to experts in such matters. I argue that rules of interpretation behave in a similar manner – the content of these rules is determined by what these rules mean for legal experts.

Importantly, as Jeff Engelhardt (2019) argues, 'the sociality of the division of linguistic labour is plausibly obscured by the tendency among many philosophers to focus exclusively on scientific terms' (p. 1856). As he argues, this tendency 'gives the impression that (i) only scientific terms are subject to the division of linguistic labour, that (ii) only research into natural kinds can be linguistic labour, that (iii) linguistic labour can be divided only according to scientific expertise relevant to a term's referent, and that (iv) if a word is subject to the division of linguistic labour, then it has its extension determined by the objective natural kinds in the world' (p. 1856). Nonetheless, as he notes, the division of linguistic labour can occur with any type of term, including artefact terms and social kind terms.

Accordingly, Coleman and Simchen (2003) argue that the distinction between terms that are linguistically deferential and terms that are not cuts across the distinction between natural- and non-natural-kind terms. There

are terms like 'water' and 'gold' that refer to natural kinds for which membership 'is a matter to be determined by a certain expertise'. Yet, as they argue, there are terms for natural kinds, membership in which 'is not left to experts', such as 'pebble', 'puddle', and 'pond' (Coleman & Simchen, 2003, p. 18). The former are deferential, while the latter are not. Accordingly, there are terms for simple, everyday artefacts, such as 'chair', 'pencil', and 'hammer' that do not involve reliance on experts, but there are also terms such as 'electron microscope', which are used by ordinary people in virtue of the fact that there are experts in the linguistic community who can accurately identify electron microscopes. Further developments on this insight were provided by Philippe de Brabanter and Bruno Leclercq (2003), who distinguish several kinds of semantic deference.

Now the question is: How do we decide whether a given common term is subject to the division of linguistic labour? As François Recanati (2001, p. 10) notes, a popular idea is that whenever we mentally entertain a sentence containing a symbol we do not fully understand, the deferential mechanism operates *as if* we had used it deferentially. Jesper Kallestrup (2011, p. 75) provides a noteworthy insight here: laypeople, frequently unable to say precisely how technical terms should be applied, defer to those experts who have authority on the exact application conditions of those terms, and that such deference involves readiness to conform to the ways that experts use the terms in question.

Plausibly, this is exactly the situation with rules of legal interpretation. Few people outside the legal profession can state precisely how particular rules of interpretation should be applied, but most would still defer to legal experts on the question – in this regard, they show a readiness to conform to the ways experts use these rules. Therefore, the content of interpretive rules, like the boundaries of 'fruit' or 'electron microscope', is fixed by the broader community of legal experts, even when cited by non-experts. In this way, the division of linguistic labour offers an answer to the regress problem – we need not seek further rules to specify the application of interpretive rules, because their meaning is not fully determined by explicit rules in the first place, but rather depends on expert usage.

V. KRIPKE'S ACCOUNT OF MEANING ASCRIPTIONS

In this section, I explore Saul Kripke's influential interpretation of Wittgenstein's remarks on rule-following and the sceptical problem it discusses. Based on this, I will argue that while Kripke's account may seem to threaten the idea that the content of legal rules of interpretation depends on what legal experts mean by them, Kripke's proposed sceptical solution, which involves an expressivist view of meaning ascriptions, actually provides a way out of this difficulty and can help legal interpretivists respond to the regress argument.

1. Sceptical problem

Saul Kripke's (1982) interpretation of Wittgenstein's remarks regarding rule-following has generated intense philosophical discussion. The culmination of Kripke's interpretation is the sceptical problem, which poses a challenge of whether there is a fact that determines what an agent means by a given expression. Kripke starts his considerations by introducing a dialogue between a sceptic and Jones. The sceptic asks Jones a mathematical question that he has never previously considered (let's assume that it is a question about the sum of 68 and 57). Jones performs the computation, obtaining, of course, the answer '125'. He is confident, perhaps after checking her work, that '125' is the correct answer, as he intended to use 'plus' word as in the past, that is, as denoting a function of addition, which, when applied to the numbers he called '68' and '57', yields the value '125'. Nonetheless, the sceptic encourages Jones to imagine a mathematical function, quaddition, denoted by '$\oplus$' and defined as follows: $x \oplus y = x + y$, if $x, y < 57$; $x \oplus y = 5$ otherwise. Afterwards, the sceptic argues that we cannot assert that Jones means addition by '+' if we cannot deny that Jones means quaddition by '+'. Nevertheless, if we assert that Jones means addition by '+', then we cannot deny that Jones means quaddition by '+', as all the evidence that supports the former supports the latter as well. Consequently, we cannot assert that Jones means addition by '+'. Afterward, the sceptic questions Jones if there is any fact that would support the claim that he understood '+' as an *addition* rather than *quaddition*. As Kripke notes, an answer to the sceptic must satisfy two conditions. First, it must 'give an account of what fact it is (about my mental state) that constitutes my meaning *plus*, not *quus'*. But further, it must, in some sense, 'show how I am *justified* in giving the answer "125" to "68+57"' (Kripke, 1982, p. 11).

The sceptic considers the following candidates: (1) the fact that Jones has the particular disposition to respond in a certain way; (2) the fact that Jones's use of '+' is governed by a certain rule; (3) facts concerning Jones's language training; (4) Facts concerning Jones's usage of '+' under ceteris paribus conditions; (5) facts concerning counting machines; (6) facts concerning the relative simplicity of competing interpretations of Jones's usage of '+'; (7) facts concerning Jones's introspective mental states; and (8) the fact that Jones has grasped a certain objective, abstract Platonic entity – the meaning of the symbol '+'.

After examining every possibility, the sceptic ultimately concludes that there is no fact that could justify the assertion that Jones understood '+' as an *addition* rather than *quaddition* (Kripke, 1982, p. 11). Thus, he comes to what in literature is often called the Basic Sceptical Conclusion (Wilson, 1998): 'There are no facts about Jones that fix what Jones means by a given term' (p. 107).

Recall that the sceptical problem was not merely epistemic – the case is not that a fact that Jones means addition rather than quaddition by '+' is epistemically inaccessible, making it impossible to justify the belief (even if it were true) that Jones indeed means addition by '+'; rather, there is no such fact, and just for this reason it is not only impossible to justify the belief that

Jones indeed means addition by '+' – this belief just cannot be true. This line of reasoning leads to a much less credible claim that in literature is often called the Radical Sceptical Conclusion (Wilson, 1998): 'No one ever means anything by any term' (p. 108).

It is precisely this conclusion that creates the sceptical paradox – based on a sound premise: (1) an intuitive requirement of semantic facts in order to make attributions of meaning true, and (2) a justified claim that there are no semantic facts – the sceptic arrives at an extremely counterintuitive conclusion that meaning ascriptions are systematically false, and agents that formulate such ascriptions are systematically in error.

On the basis of this argument, one might object that the idea that the content of rules of interpretation depends on what legal experts mean by them provides no real support for legal interpretivism against the regress argument. After all, if Kripke's sceptic is right, there are no facts about what legal experts (or anyone) mean by these rules. In consequence, rules of interpretation cannot have their content fixed by what experts mean, since the experts do not mean anything by them at all. The upshot seems to be that rules of interpretation have no content and thus cannot possibly determine the content of legal sources.

2. Sceptical solution

Kripke argues that Wittgenstein does not endorse the sceptical paradox, but rather provides a sceptical solution to the problematic conclusion of the sceptic. In this regard, Kripke's Wittgenstein does not give a 'straight' solution, pointing out to the silly sceptic a hidden fact he overlooked, a condition in the world that constitutes my meaning addition by 'plus'.[4] The sceptical solution concedes that there are no semantic facts in either the 'internal' or the 'external' world (Kripke, 1982, p. 69). However, Kripke goes on to argue that the idea that ascriptions of meaning require such facts is based on a philosophical misconstrual (p. 65).

For decades, one of the most popular ideas in the literature was that the sceptical solution offers a non-factualist position on meaning-ascription. In this regard, the non-factualist interpretation states that meaning ascriptions do not have any truth-conditions, but they have a non-descriptive function, as they do not express any cognitive states, like judgements or beliefs, but conative states, like emotions or evaluative attitudes (Hattiangadi, 2007, p. 89; Miller, 2010, p. 183). Other scholars, on the other hand, adopted the factualist stance toward the sceptical solution. According to proponents of the factualist interpretation, meaning ascriptions do have a descriptive function. Accordingly, in order to answer the problem posed by the sceptic, they argue that the

[4] It is worth noting that a prominent debate exists between sceptical and non-sceptical approaches to the sceptical problem. Advocates of the non-sceptical approach include John McDowell (1996, 1998, 2009), Paul Boghossian (1989, 1990, 2012), and Hannah Ginsborg (2011, 2012, 2022), among others. In this paper, however, I focus on Kripke's sceptical solution.

most crucial idea of the sceptical solution is the rejection of not so much semantic facts themselves, but their particular explanatory capacity (see Byrne, 1996; Davies, 1998; Kusch, 2006; Šumonja, 2021; Wilson, 2003).

Leaving aside current debates on the interpretation of Kripke's sceptical solution and their nuances, I endorse the view that the sceptical solution abandons the common view that conventional content of meaning ascriptions is equated to propositions, regarded as representations of the world as being a particular way which are true if and only if the world is so. In turn, Kripke endorses an ideationalist account of meaning, implying that the semantic content of a sentence is determined by the mental states that sentence characteristically expresses, and *an agent uses particular sentence correctly if they are in a* state typically expressed by this sentence. However, the core of the sceptical solution is a claim that meaning ascriptions express a specific kind of mental states, that is, mental states that are not cognitive – they are not *beliefs*, but something like desires, intentions, or plans – at any rate, such states are what Hume would have called a 'passion', as opposed to an exercise of reason.

Kripke (1982) illustrates this idea with examples of ordinary interactions involving trust and expectation:

> the customer, when he deals with the grocer and asks for five apples, expects the grocer to count as he does, not according to some bizarre non-standard rule; and so, if his dealings with the grocer involve a computation, such as '68+ 57', he expects the grocer's responses to agree with his own. Indeed, he may entrust the computation to the grocer. Of course, the grocer may make mistakes in addition; he may even make dishonest computations. But as long as the customer attributes to him a grasp of the concept of addition, he expects that at least the grocer will not behave bizarrely, as he would if he were to follow a quus-like rule; and one can even expect that, in many cases, he will come up with the same answer the customer would have given himself. When we pronounce that a child has mastered the rule of addition, we mean that we can entrust him to react as we do in interactions such as that just mentioned between the grocer and the customer. Our entire lives depend on countless such interactions, and on the 'game' of attributing to others the mastery of certain concepts or rules, thereby showing that we expect them to behave as we do. (pp. 92–93)

Therefore, the main idea of Kripke's sceptical solution is that meaning ascriptions do not aim to represent the world as it is – to report what is in other peoples' heads. Rather, they are used to express certain non-cognitive state – Kripke says here about expectations – where expectation that p does not aim to represent the world, but disposes us to act 'as if' p (Railton, 2015, p. 220). In consequence, in Kripke's (1982) view, meaning ascriptions seem to be just moves in a complex language game that establish the boundaries of a community of shared expectations – when we attribute meanings to individuals, we do not report what is in their heads; rather, we 'expect other people to behave as we do' (p. 93) and by that we 'take them provisionally into the community, as long as further deviant behaviour does not exclude them' (p. 95).

The crucial point of the sceptical solution is that meaning ascriptions, due to their expressive role, do not require any foundational reasons that play an explanatory or justificatory role. As Kripke (1982) argues, this is

the moment we ultimately reach 'a level where we act without any reason in terms of which we can justify our action. We act unhesitatingly but *blindly'* (p. 87). This suggests that our practice of attributing meanings is not grounded in any independently constituted semantic facts; rather, facts about what agents mean by particular expressions are explained in terms of our collective practices of attributing meanings, with no further justification required or possible.

Kripke (1982, p. 86) acknowledges that his expressivist view of meaning ascriptions may seem in tension with their surface grammar and our intuitive sense of their function. To respond to this worry, he argues that his account can account for key features of meaning talk such as its apparent truth-aptness, factuality, embeddability and objectivity by adopting deflationary or minimalist views of truth, factuality, and propositions (cf. Davies, 1998, pp. 130–133; Field, 1994; Horwich, 1998).

Additionally, Kripke offers a noteworthy discussion of the embeddability of meaning ascriptions. Meaning ascriptions, like any ordinary declarative sentences, seem to be capable of being the objects of propositional attitude ascriptions, can be significantly embedded in a variety of contexts, including in conditionals, negation, and propositional attitude reports. It would seem, then, that they should make the same semantic contribution in any extensional context in which they are embedded. However, this poses a challenge for expressivism. As Bob Hale (1993) notes, 'we happily affirm that if lying is wrong, getting others to lie is also wrong, without thereby expressing or endorsing the attitude of disapproval towards lying, or getting others to lie, which we should, according to the expressive theorist, be taken to express or endorse when we affirm the components in isolation' (p. 338).

But – as he argues – since the mental state expressed by the assertive utterance of 'Lying is wrong' was supposed to give the meaning of that sentence, and this mental state is not part of what is expressed by an utterance of the conditional sentence, it seems that 'Lying is wrong' cannot have the same meaning when it appears embedded in the conditional sentence as it does when it is asserted on its own.[5]

In response, Kripke (1982) states that conditionals like 'If Jones means addition by "+" then if he is asked for "68 + 57", he will reply "125"' makes it appear that Jones states that 12 + 7 = 19 and the like because he grasps the concept of addition – some mental state obtains in Jones that guarantees his performance of particular additions such as '68+ 57'. However, Kripke denies the existence of such a nexus. In turn, he reads the conditional by concentrating on the assertability conditions of a loosely construed contrapositive form of this conditional: 'If Jones does not come out with "125" when asked about "68 + 57", we cannot assert that he means addition by "+"' (p. 89). According to Kripke, by asserting such a conditional we do not represent any 'natural'

[5] In this regard, Kripke's considerations on conditionals involving meaning ascriptions can be viewed as a response to the widely discussed Frege-Geach problem (see Geach, 1958; Schroeder, 2008).

consequences that necessarily follow from such-and-such events – rather, we commit ourselves, if in the future Jones behaves bizarrely enough (and on enough occasions), no longer to persist in our assertion that he is following the rule of addition. Therefore, the rough conditional does not have any genuine representational function – it rather expresses a commitment that if the individual in question no longer conforms to what the speaker would do in these circumstances, the speaker would no longer hold his expectation toward him. This suggests that Smith attributes to Jones that he means addition by '+', because Jones did not fail Smith's expectations regarding the use of '+'. In this regard, Kripke's account may be seen as aligning with the 'logic of attitudes', which endeavours to establish that attitudinal states can behave more or less exactly like ordinary beliefs (see Blackburn, 1984; Hale, 1993; Schroeder, 2008).[6]

Finally, Kripke (1982) considers the apparent objectivity of meaning ascriptions. He seems to accept a claim that when a subject matter is objective, it is possible for one to get things *wrong* in that domain even if one thinks one has the correct view. He claims that the objectivity of meaning ascriptions is evident in the fact that whether a sentence 'Jones means addition by "+"' is true does not vary depending on what individuals happen to think about this sentence. In this regard, Kripke explains the correctness or incorrectness of such statements not in terms of semantic facts, but in terms of their vulnerability to the judgement of peers (pp. 90–92). Smith may express his positive attitude toward Jones's use of '+' by stating that Jones means addition by '+', however if Jones way of using '+' failed Williams's expectations toward Jones, then Williams can no longer attribute the grasping of 'addition' to him and, based on this, he will disagree with Smith that Jones means addition by '+', and, in virtue of this disagreement, he may refute Smith's claim.[7]

VI. THE KRIPKEAN SOLUTION TO THE REGRESS ARGUMENT

How does, then, this sceptical solution help the legal interpretivist respond to the regress argument? The worry we ended with was that, on Kripke's view, there are no facts about what experts mean by the rules of interpretation, so they cannot determinately fix the content of those rules, leading to an infinite chain of interpretations. In response, I contend that the ability of 'what legal experts mean' to halt the regress follows from Kripke's account of what we do when we ascribe meaning to particular agents. On this view, when we state

[6] It is noteworthy that the conditionals Kripke talks about are similar to the so-called mixed conditionals like 'if Bill stole the money, he should be punished.' As Hale (1993, p. 353) notes, the expressivist should read such conditionals as expressing a commitment to either denying p or insisting on q.

[7] Such a disagreement should be understood as a special kind of disagreement – disagreement in attitude. Expressivists since Charles L. Stevenson (1944) have labeled this kind of conflict a 'disagreement in attitude', and contrasted it with 'factual disagreement'.

that legal experts mean such-and-such by a rule of interpretation, we are expressing expectations rather than describing substantive psychological states. Consequently, such statements do not need justification to have a positive justificatory status – by formulating them, we act without any reason by which to justify our action.

However, the question remains: How can this expressivist understanding of legal experts' meaning with respect to rules of interpretation justify claims like '*N* is a result of the use of the rules of interpretation *R* in respect of the sources of law *S*', given that the sceptical solution seems to deny that meaning ascription have any genuine explanatory or normative force?

In response, we should look into Kripke's analysis of conditionals in which meaning ascriptions are embedded. On his view, these conditionals do not have any genuine representational function – they do not represent any 'natural' consequences that follow from a particular state of affairs; they rather express a commitment toward particular use of a given statement. Based on this, we may claim that the conditional 'if *N* is a result of the use of the rules of interpretation *R* in respect of the sources of law *S*, then legal experts mean *M* by the rules of interpretation *R*' does not represent any interpretive connection between the norm *N* and the rules of interpretation based on what they mean for legal experts. Rather, it expresses a commitment that if in the future we can no longer expect legal experts to mean *M* by *R*, then we will no longer persist in our assertion that *N* is a result of the use of the rules of interpretation *R* in respect of the sources of law *S*. The conditional under discussion thus states a practical restriction on our interpretive claims rather than any genuine relation – if I endorse such a conditional, I am provisionally entitled to the claim '*N* is the result of the use of the rules of interpretation *R* in respect of the sources of law *S*' as long as I hold my expectations as expressed by the claim 'legal experts mean *M* by the rules of interpretation *R*', while acknowledging that this claim may have to be retracted if experts' usage of *R* diverges sufficiently from my expectations. This, I argue, validates relevant intuitions concerning legal experts' role in determining the content of rules of interpretation.

The same strategy can be applied to explain the conditional 'if it is the law that *N*, then *N* is a result of the use of the rules of interpretation R in respect of the sources of law *S*.' Endorsing this conditional does not commit us to the existence of a genuine explanatory link between *N*'s legality and its derivation from *R* and *S*, suggesting that the rules of interpretation *R* are capable of playing a substantial role and determine – by themselves – the results of their application. Rather, by endorsing such a conditional, we commit ourselves that if in the future we can no longer persist in our assertion that *N* is the result of use of the rules of interpretation *R* in respect of the sources of law *S*, then we will no longer persist in our assertion that it is the law that *N*. This implies that, if I endorse such a conditional, I am provisionally entitled to the claim 'It is the law that *N*' as long as I hold '*N* is a result of the use of rules of interpretation *R* in respect of sources of law *S*.'

The Kripkean expressivist solution to the sceptical paradox thus provides the legal interpretivist with a way to embrace the claim that the content of interpretive rules depends on what experts mean by them without requiring a psychologically implausible or regress-generating appeal to independent semantic facts concerning experts' meanings. The regress of interpretations is avoided, not by providing a firmer factual foundation for interpretivist claims, but by relocating the notions of meaning, authority, and determinacy of content to the level of social practices of upholding mutual expectations among agents.

Of course, difficult questions remain. Some people may be worried whether meaning ascriptions under the expressivist reading may function as regress-stoppers when it comes to the regress of the interpretation under discussion. According to some authors, deference to the speaker is a way of acquiring testimonial knowledge only insofar as the speaker could articulate the grounds that would allow the audience to know at first hand or non-testimonially (Faulkner, 2022, p. 667). In this regard, it is argued that testimony requires knowledge to transmit – it is a means for learning from others, for coming to know what they know. If there is no knowledge, but only expressions of desires, there is no testimony (Hopkins, 2007, p. 615). Therefore, Kripke's account of meaning ascriptions seems to undermine the possibility of a substantial knowledge regarding what others mean, and, consequently, excludes the possibility of semantic deference. Nonetheless, one may try to reconcile Kripke's semantic expressivism with the idea of semantic deference by relying on epistemic expressivism – a general view that applies expressivist stance to epistemological notions. It implies that, for instance, to say that *S*'s belief that *p* is knowledge is to express a particular kind of approval of *S*'s belief that *p* and of the epistemic position in which *S* holds the belief that *p* (Kappel, 2010, p. 176). In this regard, the sceptical solution remains a promising direction for legal interpretivists to explore in responding to the regress argument.

VII. CONCLUSIONS

The primary objective of this paper was to counter the Infinite Regress of Interpretation Argument against Legal Interpretivism, understood as the position that: (1) identifying legal content in relation to the sources of law necessitates interpreting these sources, and (2) an interpretation identifies legal content correctly if it aligns with the result of applying the proper method of interpretation to the sources of law. By integrating insights from both the division of linguistic labour and the sceptical solution to rule-following, I demonstrated that the regress of interpretation may be halted. It follows from the fact that meaning ascriptions – expressively understood – do not need any genuine justification to have a positive justificatory status – by formulating them, we act without any reason in terms of which we can justify our action.

In response to the question of how 'what legal experts mean by such-and--such rules of interpretation', taken in an expressivist manner, may serve as 'unjustified justifiers' for claims such as '*N* is a result of the use of rules of interpretation *R* in respect of the sources of law *S*', I invoked Kripke's expressivist account of conditionals in which meaning ascriptions are embedded. As Kripke states, such conditionals do not have any genuine representational function – they do not represent any 'natural' consequences that follow from a particular state of affairs; they rather express a restriction on the particular use of a given statement. Based on this, I argued that by asserting the conditional 'if *N* is the result of the use of rules of interpretation *R* in respect of the sources of law *S*, then legal experts mean *M* by the rules of interpretation *R*', we commit ourselves, if in the future we cannot expect legal experts to mean *M* by rules of interpretation, no longer to persist in our assertion that *N* is the result of the use of the rules of interpretation *R* in respect of the sources of law *S*. Accordingly, by asserting the conditional 'if it is the law that *N*, then *N* is the result of the use of the rules of interpretation *R* in respect of the sources of law *S*' we commit ourselves to the following: if in the future we can no longer persist in our assertion that *N* is the result of the use of the rules of interpretation *R* in respect of the sources of law S, then we will no longer persist in our assertion that it is the law that *N*. Based on these construals, I argued that the sceptical solution remains a promising, expressivist direction for legal interpretivists to explore in responding to the regress argument.

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