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Abstract

Statutory Interpretation is a comprehensive and nuanced account of some of the most fundamental features of the law: legal reasoning and interpretation. The book draws on philosophy, argumentative theory, linguistics, artificial intelligence, and dialectics to develop a robust theory of argumentation and pragmatics both in and outside of the law. The work is written by Douglas Walton, former Distinguished Research Fellow at the University of Windsor's Centre for Research in Reasoning, Argumentation and Rhetoric; Fabrizio Macagno, professor at Universidade NOVA de Lisboa; and Giovanni Sartor, professor at the University of Bologna. This work represents a balance, most of all, of theoretical and practical understandings of statutory interpretation. It makes inroads into some of the most challenging abstract aspects of statutory interpretation, yet grounds itself in a space where applicability and practicality are the text's raison d'être. Readers will come away from this book with a keen understanding of how they can interpret the law and, more importantly, how they can justify the frameworks guiding these interpretations.

Book Review

Statutory Interpretation: Pragmatics and Argumentation by Douglas Walton, Fabrizio Macagno and Giovanni Sartor[1]

MATTHEW TRAISTER[2]

STATUTORY INTERPRETATION IS A comprehensive and nuanced account of some of the most fundamental features of the law: legal reasoning and interpretation. The book draws on philosophy, argumentative theory, linguistics, artificial intelligence, and dialectics to develop a robust theory of argumentation and pragmatics both in and outside of the law. The work is written by Douglas Walton, former Distinguished Research Fellow at the University of Windsor's Centre for Research in Reasoning, Argumentation and Rhetoric; Fabrizio Macagno, professor at Universidade NOVA de Lisboa; and Giovanni Sartor, professor at the University of Bologna. This work represents a balance, most of all, of theoretical and practical understandings of statutory interpretation. It makes inroads into some of the most challenging abstract aspects of statutory interpretation, yet grounds itself in a space where applicability and practicality are the text's *raison d'être*. Readers will come away from this book with a keen understanding of how they can interpret the law and, more importantly, how they can justify the frameworks guiding these interpretations.

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1. (Cambridge University Press, 2021) [*Statutory Interpretation*].
2. JD (2023), Osgoode Hall Law School. The views expressed herein are the author's alone and do not represent the views of the Federal Court of Canada.

Where there is law, there is interpretation. Specific methods and positions guide this interpretation depending on jurisdiction and the body of law in question. In Canada, for example, federal law on statutory interpretation dictates a "purposive" approach to interpreting statutes.[3] Debates about statutory interpretation have often invoked fundamental questions about the role of interpreters,[4] the proper power of interpretation,[5] and what one strives for in interpreting legislation.[6] This book provides inroads into these debates. However, its scope is also much wider.

The central question of *Statutory Interpretation* is how instruments of interpretation and/or argument can inform "laypeople who wish to comprehend the logic and the legal nature of [legal] decisions, which can influence their lives and their choices."[7] The authors' answer is through pragmatics, which they define as the "study of meaning in relation to speech situations… [pragmatics] addresses the ways in which the linguistic context determines the proposition expressed by a given sentence in that context."[8] For example, the sentence "Bill is tall" cannot be determined to be true or false merely by examining the relationship between the sentence's objects and corresponding predicates; rather, "we need to consider the context of the utterance."[9] As statutory interpretation is always and essentially concerned with uncovering the meaning of terms within a given context (*i.e.*, legal terms from a decision, or in the statute itself), it is thus essentially pragmatic.[10] "Argumentation" in the context of this book refers to determining which meaning of a given term ought to be accepted or rejected—

3. *Interpretation Act*, RSC 1985, c I-21, s 12.
4. See *e.g.*, Cass R Sunstein & Adrian Vermeule, "Interpretation and Institutions" (2003) 101 Mich L Rev 885; Eric A Posner & Cass R Sunstein, "Institutional Flip-Flops" (2016) 94 Tex L Rev 485; Richard A Posner, "The Meaning of Judicial Self-Restraint" (1983) 60 Ind LJ 1; Richard A Posner, "Statutory Interpretation: in the Classroom and in the Courtroom" (1983) 50 U Chicago L Rev 800.
5. See *e.g.*, Frank H Easterbrook, "Legal Interpretation and the Power of the Judiciary" (1984) 7 Harv JL & Pub Pol'y 87; Willian N Eskridge Jr, "All About Words: Early Understandings of the "Judicial Power" in Statutory Interpretation, 1776-1806" (2001) 101 Colum L Rev 990; Grant Huscroft, "The Trouble with Living Tree Interpretation" (2006) 25 UQLJ 3.
6. See *e.g.*, Steven D Smith, "What Does Constitutional Interpretation Interpret?" in Grant Huscroft, ed, *Expounding the Constitution: Essays in Constitutional Theory* (Cambridge University Press, 2008) 21; Paul H Fry, "Matters of Interpretation" (1994) 6 Yale JL & Human 125; Lord Renton, "Interpretation of Legislation" (1982) 3 Stat L Rev 7.
7. *Statutory Interpretation*, *supra* note 1 at 2.
8. *Ibid* at 7-8.
9. *Ibid* at 157.
10. *Ibid* at 8.

and why.[11] The authors generally examine argumentation through the use of "argument schemes," which represent "the structure of defeasible arguments… not proceeding from the meaning of quantifiers or connectors only, but rather from the semantic relations between the concepts involved."[12] One semantic relation in law, for example, would be in classifying a "steamboat" as an "inn" under the relevant statute.[13] The argumentative scheme, in turn, would be the series of defeasible arguments that show a steamboat to be, or not be, an inn under the relevant formal argumentative structure.[14] Expounding upon and demonstrating this connection between pragmatics and argumentation, and the ensuing argumentative schemes that can be deployed in service of statutory interpretation, is the task of *Statutory Interpretation*.

The book is divided into six chapters. The first provides a wide, multidisciplinary account of recent literature on interpretation; the second is an argument for the connection between interpretation and argumentative theory. These are, broadly speaking, methodological chapters: The authors take time to explore and develop key terms in statutory interpretation, argumentation theory, and pragmatics, including key concepts like legal ambiguity,[15] maxims of conversational and legal meaning,[16] and the relationship between argumentation schemes and dialectics.[17] The third chapter sees the authors develop their view of pragmatics by examining it in the context of when interpretation needs to be deployed: namely, in instances of vagueness and ambiguity. For the authors, these instances are vital in demonstrating the connection between interpretation and pragmatics, insofar as ambiguity and vagueness both necessarily lead to an interpreter resorting to the context of the ambiguity or vagueness' utterance and a justification of why the context leads to one interpretation or another.[18] The next chapter examines "pragmatic maxims" and presumptions of legal interpretation to demonstrate the relationship between pragmatics and legal interpretation. An example of one such relationship is between the maxim to "[m]ake your contribution as informative and no more informative than is required"[19] and the presumption that the plain meaning of a statute dictates which objects

11. *Ibid* at 5.
12. *Ibid* at 211.
13. *Ibid* at 219.
14. This structure will be shown below. See *ibid* at 220.
15. *Ibid* at 100-110.
16. *Ibid* at 176, 181-89.
17. *Ibid* at 211.
18. *Ibid* at 97-110. See especially 126-39.
19. *Ibid* at 163.

fall under the statute's classification and which do not.[20] Chapter five provides argumentative schemes that can be deployed to evaluate legal arguments, drawing on the connection between recent literature in argumentative theory and Aristotelian dialectics. The final chapter explores how artificial intelligence can produce or inform argumentative schemes.

As their point of departure, the authors take an interpretation of interpretation itself. This includes drawing from interpretation in the sciences (including, for example, Francis Bacon's scientific interpretation[21]), art,[22] philosophy of language,[23] and law.[24] Keeping with the depth and care for precision found throughout this text, various concepts in interpretation are highlighted and problematized. Take, for example, the authors' approach to examining "interpretive canons" in certain forms of legal interpretation. As the term connotes, these forms of interpretation are canonical. In Canada, as noted, a purposive approach to interpretation represents a fundamental scheme for arguing about terms in each statute.[25] The authors reason, however, that there is more to these schemes than meets the eye:[26]

> On the one hand, they may merely be viewed as conventions for legal reasoning, namely, positive components of a certain legal system…that determine what is generally considered as a relevant argument in that system….On the other hand, interpretative schemes may be viewed as appropriate ways to achieve legal determinations, which can be assessed according to the outcomes that are obtained through their use….[These schemes] may be supported by reasons and subject to criticisms, and such reasons and criticisms may be relevant to their legal use.

The authors thus offer us an initial view of their approach throughout this book—one of detailed analysis and careful examination of each subject of consideration.

Chapter five best exemplifies this strength. Here, the authors translate interpretative arguments into argumentative schemes through mapping the latter onto six well-known argumentative patterns. These patterns include the argument from lack of evidence, argument from analogy, argument from consequences, argument from practical reasoning, and arguments from abduction.[27] The authors here base this translation on first evaluating arguments through their

20. *Ibid* at 184.
21. *Ibid* at 18.
22. *Ibid* at 21.
23. *Ibid* at 97.
24. *Ibid* at 159.
25. *Interpretation Act*, *supra* note 3.
26. *Statutory Interpretation*, *supra* note 1 at 50 [emphasis added].
27. *Ibid* at 210.

elements in formal logic. For example, an argument from analogy is stated in formal terms as:[28]

> Major premise: Generally, case A_1 is similar to case A_2.
>
> Minor premise: Predicate *P* is true (false) in case A_1.
>
> Conclusion: Predicate *P* is true (false) in case A_2.

Ever attentive to the terms used in their arguments, the authors are not satisfied with what appears to be a relatively straightforward and accepted definition of this scheme. Rather, they examine the relevant literature to carefully and clearly define each object involved in their argument. Using the example above, the authors take the time to arrive at a definition of "similarity" that they are satisfied with: "The core of the reasoning in all these different types of analogy lies in the discovery of a common semantic or accidental feature that can be found through a process of abstraction."[29] They also demonstrate how this sort of argumentation scheme, informed by pragmatics, is grounded in issues of statutory interpretation. The authors do this by dissecting the reasoning in numerous contentious cases of statutory interpretation before demonstrating how these cases can be expressed through their proposed argumentation schemes.[30] Consider the authors' use of an 1876 case to forward the notion that their argument from analogy scheme can (and should) be used in interpretation. In *Adams v. New Jersey Steamboat Co.*, 151 N.Y. 163, at issue was analogizing a "steamboat" and a "hotel." The common feature identified was that both offer "overnight accommodation." In deploying their argument from analogy to law, the authors note that this is merely an "accidental feature."[31] As such, the arguer in this instance must refer to and justify use of further context in their analysis and deploy further arguments to support their analogizing.[32]

Take another example: the contentious 2008 Supreme Court of the United States case *District of Columbia v. Heller*.[33] At issue in this case was the determination of whether people had a general constitutional right to bear arms, or whether the right to bear arms existed only when an individual was part of a militia. Per the authors, the majority's reasoning took an approach that emphasized the text as it would have been understood at the time the right was

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28. *Ibid* at 220.
29. *Ibid* at 222.
30. *Ibid* at 225-28, 232, 234-35, 237.
31. *Ibid* at 223.
32. *Ibid.*
33. 554 US 570 (2008) [*Heller*].

conceived and enacted to find a general right (the "original meaning" approach); the dissent, in contrast, took an approach that emphasized uncovering the original purpose of the right, thus finding a narrower right.[34] The authors, however, note that both approaches fundamentally misconstrued the issue by failing to "capture the linguistic processes that can lead to the interpretation of a statute"[35] insofar as both opinions failed to justify their uses of context (*i.e.*, how each position considered the intentions of the drafters of the Constitution) in their reasoning.[36] This justification of the use of context, however, is *precisely* what is sought out in pragmatics. Through evaluating what could be the relevant context at stake in *Heller* (*e.g.*, what the framers intended to exclude in their definition of the right[37]) and placing this context within one of the argumentative schemes as found in chapter five,[38] the authors demonstrate both the relevance and effectiveness of their use of pragmatics in argumentation schemes to be able to better understand and argue for specific interpretations of law—in this instance, interpretation of a law that seriously and profoundly affects the proliferation of weapons in American society.

I highlight these examples as evidence of the attention to precision that permeates this text. However, I also cite these examples as emblematic of the authors' ability to translate what are largely theoretical constructions into practical instruments through careful analysis and substantiation, clear reasoning, and an emphasis on applicability.[39] By deconstructing the disparate strands of pragmatics, argumentation, and statutory interpretation into their most elemental components, and then reconstructing these fields into argumentative schemes in service of interpreting terms of law, the authors have provided readers with tools for the careful, logical, and coherent construction of legal arguments. Providing theoretical constructs frequently examined in light of concrete instances of statutory ambiguity,[40] the book also strikes a double movement. On the one hand, readers are served as scholars, being provided with carefully articulated

34. *Statutory Interpretation*, *supra* note 1 at 128.
35. *Ibid*.
36. *Ibid* at 129.
37. *Ibid* at 134.
38. *Ibid* at 264-65.
39. Other examples of this emphasis include the numerous visual graphs that the authors helpfully use throughout the text so that readers may visualize otherwise abstract lines of reasoning. For example, the authors provide a visual map of the arguments and counterarguments at stake in *Heller*, *supra* note 33. See *ibid* at 131.
40. The most powerful instance of this trend in the book is perhaps found in the Authors' examination of *James v. United States* (550 US 192 (2007)) and *Heller*, *supra* note 33. See *Statutory Interpretation*, *supra* note 1 at 232-34, 263, 126-39, 264-65.

and substantiated arguments about the connections between pragmatics, argumentation, and statutory interpretation. Should the "reader-as-scholar" seek to further study these fields and their connections, this book serves as an immensely helpful starting point. This work also serves as a potential point of entry into new avenues for exploring some of the most difficult issues in statutory interpretation: for example, why—and when—certain fundamental positions in statutory interpretation (*e.g.*, the purposive approach) ought to be accepted or rejected. On the other hand, the "reader-as-practitioner" is provided with both the method and substance for their interpretive practice. Faced with an ambiguity, chapters four and five provide numerous argumentative frameworks through which the practitioner may ultimately uncover, examine, and evaluate the meaning(s) of a given legal term to resolve ambiguity and, vitally, argue for *why* their resolution is to be preferred to another given the context of the legal utterance. Examined through this lens, we see that the authors achieve the necessary movement from theoretical to practical, definition to argumentation, and abstraction to instantiation. Additionally, there appears to be little work that, aside from the previous work of the authors, has so comprehensively merged the fields of argumentation theory, pragmatics, and statutory interpretation. This makes the authors' efforts even more impressive, with *Statutory Interpretation* representing a novel entry into these fields respectively, but also collectively.

Although an intellectual feat, the book's value is found in its utility. On these grounds, this effort is a triumph. Carefully reasoned and extensively researched, the scope and depth of this work will serve the lawyer, judge, scholar, or layperson to resolve ambiguities in the law, from the most basic instance of statutory interpretation to the most labyrinthine. Interpreters everywhere would be remiss to overlook *Statutory Interpretation*.