Use and Abuse of Intratextual Argumentation in Law

Uso y abuso de la argumentación intratextual en el derecho

Damiano Canale
Department of Legal Studies, Bocconi University, Milan, Italy
damiano.canale@unibocconi.it

Giovanni Tuzet
Department of Legal Studies, Bocconi University, Milan, Italy
giovanni.tuzet@unibocconi.it

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Abstract: Our aim in this paper is to focus on the uses of *intratextual argumentation*, according to which the interpretation of a legal provision is justified if it is consistent or coherent with the content of other legal provisions in the same act or code. In particular, we consider the uses of intratextual argumentation which single out some subsystems within the same legal system, and we ask under what conditions the application of this canon is justified and thus acceptable in legal decision-making. We argue that there are basically two kinds of intratextual argumentation in law. First, judges resort to intratextual arguments which rest upon textual *positive* consistency or coherence: these arguments justify the constant interpretation of a term or expression within a legal document. Secondly, courts make use of intratextual arguments which rely on *negative* consistency or coherence: such arguments justify different interpretations of the same term or expression on the basis of its normative context.

Keywords: Systemic Argumentation, Intratextual Argumentation, Contextualism, Inferentialism, Proceeds of Crime.

Resumen: Nuestro objetivo en este artículo es centrarnos en los usos de la argumentación intratextual, de acuerdo con la cual la interpretación de una provisión legal está justificada si es consistente o coherente con el contenido de otras provisiones legales en el mismo documento o código. En particular, consideramos los usos de la argumentación intratextual para individualizar algunos subsistemas dentro del mismo sistema legal; y nos preguntamos bajo qué condiciones la aplicación de este canon está justificado y, de esta forma, su uso es aceptable en la toma de decisión legal. Sostenemos que hay básicamente dos tipos de argumentación intratextual en el derecho.

Primero, los jueces recurren en la argumentación intratextual que descansa sobre la consistencia textual positiva: estos argumentos justifican la interpretación constante de un término o expresión dentro de un documento legal. Segundo, las cortes hacen uso de los argumentos intratextuales que descansan en la consistencia negativa: tales argumentos justifican interpretaciones distintas del mismo término o expresión sobre la base de su contexto normativo.

Palabras clave: Argumentación sistemática, argumentación intratextual, contextualismo, inferencialismo, provecho del delito.

1. Introduction

According to intratextual arguments, the interpretation of a legal provision is justified if it is coherent or consistent with the content of other legal provisions within the same text (act or code or part of it). These arguments belong to a family of justification techniques labeled 'systemic argumentation in law': they focus on the systemic relations among legal terms and expressions, seen as the keystone of content ascription in legal interpretation.

Indeed there are good reasons in favor of using intratextual argumentation in interpreting legal provisions and they are well known by legal scholars. These reasons rest upon the relevance of the legal context in determining the meaning of a legal term or expression.[1] The meaning of a legal provision cannot be determined in isolation, it is often claimed, for it is context-sensitive. It depends, among other things, on the meaning of other provisions of the same document or text. According to this, therefore, the interpretation of a legal expression is justified only if it is coherent or consistent with the interpretation of the other provisions of the same document in which the interpreted expression occurs. And it is so when the *same meaning* is ascribed to the instances of the expression in the same context of regulation, whereas a *different meaning* is ascribed to such instances when the context of regulation is different.

Notice the last point: how shall we interpret a legal expression when it is used in different contexts of regulation? In such cases, intratextual argumentation seems to justify the following interpretive rule: the meaning of a legal expression is to be distinguished from the meaning of the *same*

[1] See Canale and Tuzet (2007). But cf. Duarte (2011).

expression when the context of regulation is different. Then intratextual argumentation purports to single out one or more subsystems within the same legal system. We will label this kind of intratextual argumentation 'Multiple Subsystems Argument' (MSA).[2]

As we shall notice, this argument cannot be easily justified; when it is not, a decision according to it turns out to be an abuse of intratextualism in law. In fact MSA leads judges to segment legal texts into countless directives of action which are semantically independent one another, although they share some legal terms and expressions. Moreover, it represents a threat to the rule of law principle in common law countries and to the legality principle in civil law ones, both taken as requiring the separation between legislation and adjudication, on the one hand, and the predictability of judicial outcomes, on the other. In short, this argument may justify a form an 'interstitial legislation' by judges, aiming to achieve social and political goals by forcing the semantic structure of legal texts.

Consequently, the argumentative commitment undertaken by using MSA is remarkably strong: it can be met only by showing that different instances of the same expression cover contexts of regulation that differ from one another in a relevant aspect, for instance in the object of regulation, or in its purpose (*ratio legis*). In the following pages we shall deal with the main features of systemic argumentation in law, consider the characteristics of MSA by giving an example of it (the Impregilo case), and point out under what conditions the application of this canon is justified and thus acceptable in legal decision-making. These conditions will be set out on the basis of an inferentialist account of legal content and argumentation.

2. Holistic and systemic argumentation in law

Before going into the distinctive aspects of MSA, it is helpful to recall some general features of systemic argumentation and interpretation in law. On the one hand, this interpretive approach follows the intuition that the meaning of a legal provision is not 'atomic' but rather 'molecular' or even

[2] We won't give a formal definition of 'legal system' and 'subsystem', since we will use these notions in the informal way they are used in legal practice: set of legal norms (legal system) and part of it (subsystem). We don't need to put artificial precision on this.

'holistic', insofar as it depends on the whole text or system of texts it belongs to. On the other hand, systemic argumentation is rather a family of different interpretive and argumentative techniques. In the *common law* countries it includes canons such as the whole act rule,[3] the presumption of statutory consistency,[4] the rule against surplusage,[5] and the argument from structure.[6] In these countries, the resort to systemic canons is typically defended on 'rule of law' grounds: 'the meaning suggested by considering other statutory provisions and structures might be the most objective basis to use in determining what the rule of law requires'.[7] In the *civil law* countries systemic argumentation typically encompasses the argument from legal topography, the argument from dogmatic construction, the argument from consistency, the argument from coherence, and the argument from principle.[8] According to these legal canons, construing statutes is performing a holistic endeavor based upon the connections among legal texts, which aims at reframing them, by means of interpretation, as a coherent or at least consistent whole.

Apart from the structural differences between the two sets of interpretive rules just mentioned, it is worth noting that these canons lead to different and sometimes incompatible outcomes as to the interpretation of a given provision.[9] For instance, it might be the case that provision P has meaning M_1 according to the argument from topology and meaning M_2 on the basis of the argument from dogmatic construction, where M_1 is inconsistent with M_2.[10] So, even if it is widely accepted that the meaning of a legal

[3] See *Bebbit* v. *Sweet Home*, 515 U.S. 687 (1995), where both majority and dissenting opinions heavily relied on this argument. Cf. critically Boudreau et al. (2007).

[4] *Gustafson* v. *Alloyd Co.*, 513 U.S. 561 (1995), Justice Scalia's dissenting opinion.

[5] According to this interpretive canon, every statutory term adds something to the law as to its regulatory impact. See Eskridge, Frickey and Garrett (2006, p. 275).

[6] An interpretation of a legal text is justified if it fits the internal structure or articulation of the text better than others: a clear application of this canon is given by Scalia's dissenting in *Bebbit* v. *Sweet Home*.

[7] Eskridge, Frickey and Garrett (2006, p. 272).

[8] See e.g. Tarello (1980, pp. 375-378), Alchourrón (1996, p. 345 ff.) and Guastini (2004, pp. 167-173). Cf. Velluzzi (2002) and Ratti (2008).

[9] This is no surprise for those who think that, for any legal canon of interpretation, there exists another canon leading to the opposite conclusion. See Llewellyn (1950). Cf. critically Macey and Miller (1992).

[10] Being M_1 and M_2 meanings of P, the inconsistency relation among them can be described as follows: if P means M_1, then it is not possible that P means M_2.

provision is 'molecular' or 'holistic', it is difficult to figure out, in a concrete case, what interpretive canon has to be used to fix the meaning of it according to a systemic or holistic perspective. In fact, such arguments frame the legal system differently, and draw from its features different interpretive conclusions.

This remark seems to endorse some general objections that have been addressed, from a theoretical point of view, to the idea of providing *systemic representations* of law and, from a practical point of view, to the appropriateness of *systemic argumentation* in law. As to the first issue, one may recall the realist and pragmatist objection according to which the law is anything but a system, for it is a piecemeal construction driven by pragmatic motives rather than an architectural enterprise guided by theoretical considerations.[11] From this point of view, a legal system is simply a representation of the law proposed by officials, lawyers and legal scholars, on the basis of their interpretation of a set of legal provisions; a representation that does not correspond to the reality of the law but recasts it for practical purposes. But insofar as legal systems are not given as such, as they were sets of data susceptible of being described, and insofar as they are *constructions* of legal scholars, one may wonder what kind of role they can legitimately play in legal interpretation and argument. If the point of legal interpretation and argument is that of providing reasons in favor of a certain regulation of a case or class of cases, the point of legal interpretation and argument is justificatory: we need some good reasons supporting a definite regulation. Now, if legal systems come to existence only as the outcome of scholarly and dogmatic constructions, they are themselves in need of justification and hence can hardly play a justificatory role. If this is correct, systemic or holistic argumentation has no justificatory force except the force of the reasons for which the system itself is constructed. In brief, systemic argumentation has no *independent* justificatory force.

Systemic argumentation and interpretation in law give rise to a further issue that legal scholars have not sufficiently paid attention to. Each systemic canon mentioned above can justify *opposite* interpretive outcomes. The outcome is *positive* when the meaning of provision A has relevant similarities with the meaning of provision B: this is the case, for instance,

[11] See Haack (2007). Cf. Alchourrón and Bulygin (1971), Bulygin (2008).

when they rule the same object or share the same purpose. In this sense, they have to be interpreted in accordance with one another. On the contrary, the outcome of systemic interpretation is *negative* when A and B are taken to rule cases, or to pursue goals, that differ in a relevant aspect. In this sense, systemic interpretation can be used to justify the claim that a legal provision is *not* connected in meaning to other provisions of the same statute or code.

How is this possible? Requirements of consistency and coherence play a role here, but, as it is well-known, these are vexed notions. Consistency is usually taken by philosophers as a logical notion (absence of contradictions), but in the legal domain it is sometimes taken as a more substantive notion. Coherence is something more than mere logical consistency and is hard to define: it is a sort of 'making sense' that concerns not only the logical relations between sentences but also their content and relations to the world; furthermore, in the legal domain it is used to capture not only explanatory relations but also normative and justificatory ones. [12] Now, be as it may, consistency and coherence can be seen as *negative relations*: consistency and coherence are retained by differentiating the meaning of a legal provision from the meaning of other legal provisions. Intratextual interpretation, as we shall point out, can be seen as a negative relation as well: interpretation within a statute or context is possible if we differentiate the meaning of the relevant terms, expressions and provisions within such statute or context from their meaning outside it. So, these arguments are not used to build up a legal system as a whole but the other way round: the general idea of a system is used to isolate the meaning of a legal provision from the meaning of other provisions belonging to the same system or domain; in brief, it is used to differentiate subsystems within the same legal system. Pushing this kind of argumentative technique to its extreme consequence, *even a single legal provision might build up a legal subsystem*. This is the case when a provision is interpreted with the aim to mark off some relevant aspects of its content, such as the purpose of regulation, from the meaning of other provisions within the same statute or code. We are familiar with the received view that holistic arguments concern the

[12] See e.g. Schiavello (2001) and MacCormick (1984).

interpretation of provisions in the light of the system as a whole, but in principle even a single legal provision can constitute a subsystem whose content is different from the rest of the law.

3. The Impregilo case

To give an example of this, we shall consider a recent case decided by the Italian High Court (*Corte di Cassazione*). In the Impregilo case, the Court had to determine the meaning of the term 'proceeds' in the Italian legislative discourse.[13] What was at stake in the case? The Court had to say, to be sure, what the meaning of the expression 'proceeds of crime' (*profitto da reato*) is in Italian law in the context of a seizure (*sequestro preventivo*) against a company under investigation according to decree 231/2001. The Impregilo Company was accused of fraud against public administration having performed various irregularities and crimes in the contract for solid waste disposal service in Naples and Campania (both during the awarding of the contract and in the course of the execution). The amount of the seizure was about 750.000.000 Euros.

In order to determine the correctness of the amount, the Court faces a serious difficulty in settling the meaning of the expression 'proceeds of crime', since a legislative definition of it is missing. By 'proceeds of crime', in brief, should we mean net or gross proceeds?

The Court says that the expression is used in various provisions that do not include, however, any legislative specifications about its meaning. So there is a semantic problem about it. Then the Court points out in its ruling that 'proceeds' has usually been given a broader meaning in legal and criminal discourse than it has in economic discourse. From art. 240 of the Italian criminal code, from the precedents and from the relevant doctrine, says the Court, one learns that 'proceeds' stands for the 'economic advantage' that one gets from a crime in a 'immediate and direct way'. But this is not enough to settle the matter, not only because one wonders what 'immediate and direct way' means in this context, but also because one would like

[13] Cassazione Penale, Sez. Un., 2-7-2008, n. 26654.

to know if 'economic advantage' stands for net or gross proceeds.[14] Only the proceeds of crime can be the object of a seizure in view of forfeiture (*confisca*) according to decree 231/2001. But we need to know what the content of such a notion exactly is in the legal discourse and what interpretive arguments can be used to determine it.

The Court states that such a notion has 'different meanings in the different legal contexts where it is used'. Then the reasoning of the Court goes on by distinguishing *different legal contexts* and claiming that the meaning of the expression changes with the context. In other words, the Italian legal system can be divided into various subsystems where the notion in question has different meanings. There is, according to the Court, a plurality of normative subsystems and a corresponding plurality of content. The interesting remark made by the Court is that the relevant divide is not a general one between, say, criminal and civil law, but a more specific one. Within criminal law? Much more than that: within decree 231/2001. The Court claims that different articles of this decree use the term 'proceeds' in different senses according to the purpose of regulation. Therefore, one can think of such legal document as constituted by different subsystems where 'proceeds' has different meanings. To recall the categories of legal interpretation and argumentation theory, this is a case of intratextual interpretation where the relevant text is not the whole act but some articles of it. What articles? The Court claims that in art. 15 of the decree 'proceeds' means *net* proceeds, for the article deals with the 'body's activity to be run by a temporary receiver under the judge's orders in the interest of the community (to ensure public service or levels of employment)' (to the same conclusion the Court refers to art. 13). Then the Court adds that in art. 19 of the same decree 'proceeds' means *gross* proceeds, for the article deals with the possibility of a forfeiture, whose purpose is a sanction reestablishing the *status quo ante*. The Court maintains that such a role is in tension with the idea that 'proceeds' means net proceeds (this is confirmed in the Court's view by arts. 6, 9, 17 and 23). Finally the Court claims that from a dogmatic point of view 'proceeds' means two different things with

[14] There are further problems consisting in the fact that the code distinguishes the 'proceeds' of the crime from the 'product' (*prodotto*) and the 'price' (*prezzo*) of it. What are the differences between such similar notions? Cf. art. 240 of the Italian criminal code and art. 19 of decree 231/2001. See Alessandri (2006).

respect to the dogmatic distinction between 'illegal contract' (*reato contratto*) and 'illegal act in contract' (*reato in contratto*).[15] There is an *illegal contract* when what is illegal is the stipulated contract itself, says the Court, regardless of the contract execution; there is *illegal act in contract* when the contract is lawful and the illegal element concerns the process of contract awarding or execution. In the Court's opinion this difference should not be disregarded, so that the proceeds cannot be the same: on the one hand, if reference is made to an *illegal contract*, the proceeds of it should be understood as *gross*, for the law cannot admit that the costs of such an illegal activity be deduced from the seizure and eventually from the forfeiture; on the other, if reference is made to an *illegal act in contract*, that is to an illegal act committed within a legal contract, the proceeds should be understood as *net*, for the activity in question is legal on the whole and the costs of it should be deduced from the amount of the seizure (art. 53) and forfeiture (art. 19). In fact the Court maintains that the Impregilo company performed a legal economic activity but was liable of fraud against public administration (a form of *illegal act in contract*). Therefore, in the specific case, 'proceeds' had to be read as *net* proceeds as far as the economic activity of the company is legal.[16]

So, to sum up, in the Court's opinion 'proceeds' has different meanings in the very same document, namely decree 231/2001:

1. in art. 15 the term 'proceeds' refers to the money realized by a company after all costs are deduced (net proceeds);
2. in art. 19 the term 'proceeds' refers to the money realized by a company before costs deduction (gross proceeds) – unless there is an illegal act in contract (in which case it means net proceeds).

The basic difference seems to be the one between the economic and the criminal understanding of the notion of proceeds, but the legal regulation of the matter is more complicated than this. The Court singles out various contexts where 'proceeds' means different things and distinguishes, from a

[15] See e.g. Grasso (2002) and Leoncini (2006).

[16] On the basis of this, the amount of the seizure against Impregilo had to be recalculated by the Naples Tribunal.

dogmatic point of view, different hypotheses within the criminal meaning on the basis of the objects and purposes of regulation.

Now the question is this: Is this form of argumentative technique legally justified? How many legal subsystems can a court build up arguing in this way? In the following section we address the issue of the justification conditions that restrict the possibility of arguing in this way when deciding a case.

4. What does 'proceeds' mean?

The justification conditions of MSA can be fruitfully accounted for by means of the inferential framework we already used in other papers, in which we analyzed the structure of such legal argumentative techniques as the *a contrario* argument, the *a simili* argument and the argument from legislative purpose.[17]

The main idea underlying this framework can be outlined as follows. The ascription of meaning to a legal provision can be seen as an act of assessing correctness conditions as to the use of some legal terms or expressions.[18] Determining what a legal expression means is to fix under what conditions the expression is correctly used in the linguistic practice called legal argumentation and adjudication.[19] As far as an inferential approach to meaning in concerned,[20] these conditions have an inferential nature and can be made explicit in legal argument: to put it differently, the meaning of a legal expression can be described as the set of inferential relations in which it participates in a discursive practice. Take for instance the meaning of the term 'proceeds', which is at stake in the Impregilo case. The two disputed meanings of this term in decree 231/2001 can be described using two conditionals. These conditionals express the concepts of *net* and *gross*

[17] See Canale and Tuzet (2008), (2009), (2010).

[18] Cf. Boghossian (2002, p. 149).

[19] As McDowell (1998, p. 221) puts it, determining the meaning of an expression is to act in a way that 'obliges us subsequently – if we have occasion to deploy the concept in question – to judge and speak in certain determinate ways, on pain of failure to obey the dictates of the meaning we have [fixed]'.

[20] See Brandom (1994) and (2000).

proceeds respectively, by making explicit two different sets of inferential relations in which the term 'proceeds' is involved:

(1) If the company's revenues are X and the costs are Y, then the proceeds are (X–Y), and the amount of the seizure has to be (X–Y).

(2) If the company's revenues are X, then the proceeds are X, and the amount of the seizure has to be X.

Under this description, the meaning of 'proceeds' in decree 231/2001 is considered as a set of (material) inferences[21] governing the use of the expression in legal interpretation and argument. Moreover, from a pragmatic point of view, when a court uses the provisions of decree 231/2001 that include the term 'proceeds', it undertakes a commitment as to the inferential moves which have to be performed in order to justify meaning ascription. Assume that the ascribed meaning is (1), for instance. If the court claims 'The company's proceeds are (X–Y)', then it is committed to the claim that the company's revenues and costs are X and Y respectively, and to prescribe that the amount of the seizure be (X–Y) according to the law. In case the ascribed meaning is (2), on the contrary, if the court claims 'The company's proceeds are X', then it is committed to the claim that the company's revenues are X and the costs are not to be taken into account in this respect; it is also committed to prescribe that X be the amount of the seizure according to the law.

If these commitments are not satisfied by the court in tune with the ascribed meaning, then its decision is not justified, and the term 'proceeds' turns out to be wrongly applied by the court.

[21] See Sellars (1953). The validity of material inference is thought of by Sellars as depending primarily on the meaning of the expressions standing in such inferential relations. The inference from 'Rome is to the North of Naples' to 'Naples is to the South of Rome' is a material inference according to Sellars, for its correctness does not depend on a logical rule but on the linguistic competence of the speakers.

5. Default position in meaning ascription

On the basis of this framework, we are now able to address the following question: Under what conditions does the meaning of a legal term or expression change within the same legal document or context? This is the key issue to be addressed in intratextual argumentation. In fact this interpretive canon, or set of arguments, leads the judge or interpreter to prefer the meaning of a provision which is consistent or coherent with the rest of the legal document it belongs to.[22] As Akhil Amar points out, in deploying the technique of intratextualism 'the interpreter tries to read a contested word or phrase [...] in light of another passage [of the same document] featuring the same (or a very similar) word or phrase'.[23] As we have noticed, however, meaning consistency or coherence can be seen either as a *positive* or as a *negative* relation. As a positive relation, it obtains if the instances of an expression within a legal document have the *same* meaning. As a *negative* relation, it obtains when meaning changes. Now, under what argumentative conditions claiming the constancy of meaning is justified?

It is often pointed out in legal argumentation that an expression retains or should retain the *same* meaning on the basis of the so called 'principle of economy' of legislative discourse: do not use more linguistic resources than you need. This principle follows from *ideal* or from *pragmatic* premises. As to the first ones, an ideal legislature does not use different expressions to convey the same meaning: it uses the same words to say the same thing and uses different words to say different things, to comply with the rule of law. As to the second kind of premises, the legislature is assumed to be adequately but not overly informative: it is not to use more linguistic resources then it needs in order to contribute to the success of communication.[24] On the contrary, the instances of the same term or expression are considered to have *different* meanings when they are used in different contexts. This idea is widely shared among contemporary philosophers of language who claim that meaning ascription or detection is essentially contextual: the se-

[22] Eskridge, Frickey and Garrett (2006, p. 272). Cf. Du Plessis (2005, p. 603).
[23] Amar (1999, p. 748).
[24] Consider the Gricean quantity maxim in Grice (1975, pp. 45-50) and Levinson (1983, p. 101).

mantic inferences one is permitted or required to perform are a function of contextual linguistic practice.[25]

From an inferential point of view, however, the so called 'principle of economy' and the argument from ideal legislature can be described as interpretive rules that aim to preserve the possibility of successful communication in law. As we pointed out previously, the meaning of a legal term or expression T can be seen as the set of inferences T is involved in. Therefore, when T has the same sets of inferential antecedents and consequents in different contexts of use, it bears the same meaning; if these sets are different according to the linguistic context of use, then the meaning is different as well. These inferential conditions permit the communication of directives of action despite the fact that T bears different meanings in different occasions of use.

Now the question is: On what conditions is a court entitled to use MSA (as a specific form of intratextualism) to justify its decision? Insofar as holistic interpretation is at variance with textualist atomistic canons, it should avoid reading texts in isolation; but the strategy of MSA is such that it can produce the same effects of atomistic textualism, when a given portion of legislative discourse is distinguished from the rest of it and interpreted differently. In so doing, the meaning of legal provisions is hampered by contextual constraints and the communication of directives of action could be hard to achieve.

It is now clear that the interpreter cannot make an appeal to linguistic arguments to justify that argumentative move. For these cases precisely show a failure of linguistic arguments (or, better, their insufficiency to determine an acceptable solution): linguistic arguments themselves cannot tell us whether the same term or expression has to be given (A) the *same meaning* wherever it is used or (B) *different meanings* in different contexts. A linguistic argument makes explicit the inferential relationships between T and other terms or expressions in the standard occasions of use: it puts forward the *default position in meaning ascription* but does not determine when the default position is defeated by context.

[25] See again, e.g., Canale and Tuzet (2007).

6. The justification of MSA

The inferential commitment undertaken by an interpreter in such a case is that of providing a further legal argument supporting canon (A) or (B). In the legal practice of both civil and common law countries, the arguments from purpose and the arguments from intention are considered to be helpful here. Therefore, they are worth being looked at more closely.

If a lawyer or a judge is capable of showing what the *purpose* of the regulation in question is, she has a good argument to support an interpretive choice in this respect: if it is a specific purpose, one is entitled to claim that canon (B) is to be preferred, since the specific character of the purpose justifies ascribing a contextual meaning to the disputed expression. On the contrary, if the purpose of the regulation is general and unspecific, it is justified to give the provision the meaning generally ascribed to the expression in question; that is, it is reasonable to use canon (A). This is the default solution: if one of the parties tries to support the contextual interpretation but fails, the judging court will be justified in ascribing to the expression its general and non-contextual meaning, insofar as a general requirement of consistency or coherence is in place.

Why is this so? An inferential approach to meaning sheds some light on why the argument from purpose is taken to justify the resort to MSA by lawyers and courts. Indeed a specific purpose modifies the inferential structure of the meaning of a legal expression. In particular, given certain factual antecedents (a), such a purpose affects the relationship between the interpreted expression (b) and its normative consequent (c) in an exchange of reasons. [26] According to the argument from purpose, this inferential relationship holds only if the consequent accomplishes the aim of the regulation.

The Impregilo case provides an example of this. As we have seen, in our example two inferential sets could be used to determine the meaning of the term 'proceeds' in decree 231/2001:

(1)	(2)
(1.a) Revenues are X and costs are Y	(2.a) Revenues are X
(1.b) Proceeds are X minus Y	(2.b) Proceeds are X
(1.c) Seizure ought to be X minus Y.	(2.c) Seizure ought to be X.

[26] Cf. Ross (1957), where legal concepts are analyzed in terms of factual antecedents and normative consequents.

The inference from (1.a) to (1.c) makes explicit the concept of proceeds as net proceeds, whereas the concept of proceeds as gross proceeds is made explicit by the inference form (2.a) to (2.c). What has to be preferred?

According to the argument from purpose, a normative conclusion is justified if it achieves the aim of the regulation. Therefore, if the purpose of the law is to prevent economic crime, and the bigger a seizure is the more effective the prevention is, then (2.c) is justified according to the law, for X is bigger than X minus Y. More analytically, since (2.c) better accomplishes the aim of the law than (1.c), (2.b) has to be preferred to (1.b) and the term 'proceeds' means gross proceeds. On the contrary, if the purpose of the regulation is a different one – for instance, punishing only the 'illegal act in contract' of a company without affecting its market position and employment – then (1.c) is justified and the term 'proceeds' means net proceeds. Or, since (1.c) better accomplishes the aim of the law than (2.c), (1.b) has to be preferred to (2.b) and the term 'proceeds' means net proceeds.

One significant argument mentioned by the Court in the Impregilo case is of this sort: 'proceeds' in art. 19 of decree 231/2001 has to be read as gross proceeds because the purpose of seizure and forfeiture in this context is that of sanctioning an economic crime; the Court develops several historical and doctrinal considerations to the effect that this sort of case has to be distinguished and treated differently from those in which forfeiture operates as a 'safety measure' (*misura di sicurezza*). So, assuming that the standard meaning of 'proceeds' is net proceeds, canon (B) is to be used here in order to yield a different outcome. This example shows that a specific purpose of the law influences the meaning of a legal expression when it modifies the default relationship between the expression and its normative consequents. To put it another way, a specific purpose actually reframes the inferential structure of meaning, and this can be made explicit through the pertinent inferential steps.

In addition to arguments from purpose or as an alternative, to support an intratextual reading one may typically use some arguments from *intention* purporting to show that the legislature or lawmaker had something in mind that was contextual or specific notwithstanding the unspecific language it used; the interpreter who satisfies this inferential commitment can legitimately claim that a provision is to be read according to canon (B), that is, ascribing to it a specific and contextual meaning. On the contrary, one

will be justified in reading it according to canon (A) in at least two cases: first, if one shows that the legislature or lawmaker had nothing specific in mind; secondly, if the interpreter who has the 'burden of interpretive proof' fails to show that the legislature or lawmaker was motivated by a specific intent. In the latter case, the systemic canon of consistency or coherence, together with the idea of a rational legislature and the rule of law, supports the unspecific reading of the disputed term or expression.

From an inferential point of view, these moves in the justification of MSA can be explained by looking at the inferential structure of meaning once again. A specific legislative intention affects the meaning of a legal expression in the sense that it modifies the relationship between the interpreted expression (b), its factual antecedent (a), and its normative consequent (c). Coming back to the Impregilo case, if the legislature actually intended the instance of the term 'proceeds' in art. 19 of decree 231/2001 to mean gross proceeds, whereas the other instances of the same term have another meaning, then the inference from (2.a) to (2.c) holds and MSA applies: the term 'proceeds' assumes different meanings within the same legal text. In particular, the intention of the legislature may concern the reference of the term and then shapes the inference from (2.a) to (2.b), so that (2.c) follows; or it may concern the outcome of the regulation and then explains why (2.b) has to be preferred given that the intended outcome is (2.c). On the contrary, if the legislature did not have such specific intentions, the standard position in meaning ascription prevails: the inference from (1.a) to (1.c) holds and a resort to MSA is not justified.

Indeed, other *systemic* arguments can come into play as well. For instance, as we said, the systemic requirement of consistency or coherence can rule out a contextual reading unsupported by convincing arguments. Or, as it is true of the Impregilo case, an argument from dogmatic construction can support an intratextual meaning ascription. This is the sort of systemic argument that prevailed in the Impregilo case: even if, in the light of art. 19 of decree 231/2001 and according to the purpose of seizure and forfeiture in this context, 'proceeds' means gross proceeds, the Court maintains that this was a case of illegal act in contract where 'proceeds' means net proceeds. If the Court is right, the intratextual interpretation is supported in this case by another systemic argument, namely an argument from *dogmatic construction*.

It has to be noted that this last move significantly changes the inferential meaning of the term 'proceeds'. The inferential set which makes it explicit turns out to be the following:

(3)
(3.a) Revenues are X and costs are Y
(3.b) Proceeds are X
(3.c) In case of legal contracts, proceeds are X minus Y
(3.d) Seizure ought to be X minus Y.

The argument from dogmatic construction actually adds the new premise (3.c) to the default position and this premise defeats the standard meaning ascription (3.b). However, one may wonder if the judges justify here the outcome of interpretation by splitting up the legal system again into multiple subsystems, or simply add a new premise, derived from a dogmatic distinction, which supports an exception to the law. In any case, one may ask for a justification of this argument, insofar as constructions are in need of reasons; but this further issue is not relevant to our paper.[27]

Despite it, indeed, our analysis gives an explanation of why the argument from purpose, the argument from intention, and some sort of systemic argument are taken to justify the use of MSA leading the interpreter to single out multiple legal subsystems within one and the same legal text. If some of the arguments in favor of canon (B) are effectively provided in a dispute, the use of intratextual interpretation is justified: one is entitled to give a contextual meaning to the term or expression in question only if the inferential commitments described above have been satisfied. Otherwise, if no argument of such sort is provided, a decision according to canon (B) will be an abuse of intratextual interpretation, insofar as a general requirement of consistency or coherence is accepted in the interpretive practice. Such argumentative burden is quite significant in cases of MSA, that is, when the interpreter aims to show that the general legal system in question is to be divided in multiple subsystems: in such cases the interpreter has to show

[27] Also some arguments from *principle* can be helpful in these matters, if an interpreter is able to show that a legal principle belonging to the system is relevant and dictates a solution to the case in hand. We leave this aside.

that each of these has its own contextual features and is salient for some particular kind of dispute, even when the lawmaker used an unspecific and uniform language to regulate their matters.

Obviously, our analysis does not give any answer as to whether the inferential meaning of the term 'proceeds', as well as of other disputed terms in legal interpretation, is (1), (2) or (3). The previous analysis has simply put forward the pragmatic significance of the term 'proceeds': the way in which its different uses in argumentation affect the outcome of an exchange of reasons. Moreover, it has specified the conditions under which MSA correctly applies in current legal practice.

7. Conclusions

In this paper we have claimed that there are basically *two kinds of intratextual argumentation in law*. First, judges resort to intratextual arguments which rest upon textual positive consistency or coherence: these arguments justify the constant interpretation of a term or expression within a legal document. Secondly, courts make use of intratextual arguments which rely on textual negative consistency or coherence: such arguments justify different interpretations of the same term or expression on the basis of its normative context. In current legal practice, the first kind of argument justifies the default interpretive solution from a systemic point of view. The explanation of this can be found, on the linguistic and practical level, in the structure of linguistic communication and the principle of instrumental rationality, which lead agents to opt for general and non-contextual meaning insofar as requirements of consistency and coherence are in place. On the legal level, moreover, this kind of intratextual argumentation is considered to be consistent with the rule of law principle: by protecting the standard reading of authoritative texts, adjudication is made predictable and its functions are told apart from those of legislative power. In the Impregilo case, the use of this argument would have justified *either* the ascription of meaning (1) to all the occurrences of the term 'proceeds' within the document, *or* the ascription of meaning (2) to the same occurrences.

The second kind of intratextual argument is also justified under some conditions, however. This is the case when further interpretive arguments

(arguments from purpose, arguments from intention, systemic or holistic arguments, etc.) make explicit the contextual grounds which vindicate the choice of a court to differentiate the meaning of terms or expressions within the same legal document. In the Impregilo case, the use of this sort of argumentation has actually lead the interpreter to ascribe to the disputed term the contextual meaning (3). If the arguments supporting this interpretation are justified, MSA is justified. An inferential analysis of MSA explains how this can be the case: in particular, it shows how an appeal to the intention of the legislature, or to the purpose of the law, affects the meaning of a legal provision making its relationships with other provisions in the same legal document relevant for its interpretation and for its argumentative consequences in the legal domain.[28]

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