Introduction

> In conscribendo libros scopus est, rei veritas. In explicandis libros aliorum, auctoris sententia. Quatuor igitur sunt munia boni expositoris; auctoris mentem declarare, demonstrare, quod ita sit quod dicitur, amplificare illius doctrinam, et tueri ipsum a calumniatoribus.
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> (Cardano [1501–76], *De libris propriis*, in *Opera omnia*, ed. Spon, Lyon, 1663, i.139)

> The aim in writing books is the truth of the matter in question; in expounding the books of other writers, it is the writers' meaning. Four duties therefore fall to the good interpreter: to declare authorial meaning; to show that things are indeed as they are said to be by the author; to illustrate his doctrine; and to protect him from unfair criticism.

Any survey of sixteenth-century scholarly and pedagogical writing must take into account the plethora of works of interpretation: translations, commentaries, paraphrases, exegeses, epitomes and critical editions abound in all academic disciplines, not least in the law. But although most of this material involves the construal of texts and much of it is interdisciplinary or pluridisciplinary in approach, no general theory of language emerges from it; indeed, some modern commentators have gone so far as to claim that the Renaissance did not have a concept of language as such, only of words.[1] Questions of grammar, translation and meaning are of course much discussed; but there is nothing resembling a comprehensive study of linguistics. This is also true of semantics; if one takes the twenty-two meanings of

[1] Richard Waswo, *Language and meaning in the Renaissance*, Princeton, 1987, p. 87. See also Karl Otto Apel, *Die Idee der Sprache in der Tradition des Humanismus von Dante bis Vico*, 2nd ed., Bonn, 1975.

'meaning' identified by Ogden and Richards,[2] a number of these are debated, but in widely different contexts.

Some of these questions arise in legal studies, which require quite sophisticated semantic distinctions to be made: the concepts of *mens rea*, of verbal assault, of contract, of promise, of the meaning of wills and of statutes, to name but a few, are indispensable to the working of the legal system and to the existence of law as an academic discipline. Indeed, such concepts are closely allied to the specificity of legal studies itself: 'to think like a lawyer' and 'to be trained as a lawyer' are phrases which presuppose a juristic attitude to language in relation to reference and logic as much as anything else. But even for Renaissance writers on jurisprudence, there is not a single, coherent account of the system of language in respect of meaning to which they can all refer, and this lack deprives them of an important resource when they turn to the texts of the law to interpret them.

In general terms, interpretation includes any act of mediation, exposition or elucidation of meaning; in law, this may be done by the legislator (the Emperor, in terms of the Corpus Juris Civilis), the judge, or the jurist who explicates the law for the student or a client. It can be approached in many ways: it may, for example, be categorized by its degree of authority, absolute in some cases, limited in others; it may be described in terms of a procedure or method which requires certain steps to be taken in a given order; it may be distinguished from other, similar, procedures – signification, conjecture, presumption, inference. It may be exercised differently in different sectors of the law. It may be separated into modes, such as 'extensive', 'restrictive', 'declarative'. It may aspire to recover the historical sense of a text or merely to determine what it might mean in contemporary circumstances. Certain problematic topics may be linked to it: the avoidance of cavillation (deliberate misconstruction), the resolution of ambiguity, the determination of a speaker's or writer's intention, the nature of objective meaning. Interpretation may be exercised differently by judges and by legal pedagogues or exegetes; it may take various forms – the resolution of obscurity or ambiguity, of the conflict of laws, of intention and literal meaning, the determination of parallel cases. It is subject in different ways to the constraints of

[2] See C.K. Ogden and I.A. Richards, *The meaning of meaning* (1923), London, 1946, pp. 186–7; the most relevant meanings are quoted by Geoffrey Leech, *Semantics*, 2nd ed., Harmondsworth, 1981, p. 1.

history, of language and of logic. It operates differently in statutory law systems and systems based on precedent. It is an awesomely wide-ranging phenomenon.

In setting out to give an account of interpretation and meaning in Renaissance law, my purpose has been twofold: to draw attention to a large, mainly neglected corpus of texts which have interesting things to say about the theory of interpretation and issues in semantics and the philosophy of language, and to show how the discussion of these topics in this corpus can throw light both on the paradigms of Renaissance thought about linguistic issues and on modern debates about the intellectual history of this period. This study aims therefore to be both expository and critical; as such, I cannot claim even to attempt to fulfil the second duty which Cardano ascribes to interpreters. But I hope to be faithful (in so far as this is possible) to his other prescriptions; indeed, the first and third of these account for two features of the approach adopted by this book. First, the copious quotation of obscure texts is, I hope, justified by the need to illustrate adequately the patterns of thought which I have set out to describe; second, I have included two chapters giving the broad historical background and intellectual contexts of my chosen corpus of texts in the belief that, as a number of different disciplines and different genres of writing are at issue, such contexts may not be known to all readers and may therefore be of use to some.

The question of language and meaning in the Renaissance has been at the centre of a recent fierce critical debate to which I must refer before embarking on my own examination of it. Richard Waswo's *Language and meaning in the Renaissance* (1987) is an attempt to show that Renaissance philosophers, grammarians and theologians adumbrate, if they do not actually enunciate, modern, post-Saussurean attitudes to meaning. The author is very careful to state that his own interest in the past is dictated by current linguistic concerns; his is an exercise in self-consciously ideological historical writing. The integrity of his scholarly enterprise is thus guaranteed not only by the usual academic ethics – adequate translation from one language to another, non-fabrication of evidence, regard for the distinction between plausibility and validity in inference, etc. – but also by the willingness on the part of the historian to recognize himself as an active ingredient in the reconstruction of the past. The reaction of traditional scholars to this approach has been strong; it is most clearly expressed in John Monfasani's refutation of Waswo's claims about

Valla in an article in the *Journal of the history of ideas*.[3] According to Waswo, Valla argues that linguistic categories structure our knowledge of reality;[4] this claim is impugned by Monfasani, a dedicated philologist, who shows persuasively that Valla's text is susceptible of a straightforward scholastic construction. In the same issue of the journal, Waswo replies equally persuasively that if all that Valla had done was to restate scholastic linguistic premises, he would not have been attacked so vigorously by contemporaries and near-contemporaries as heterodox.[5] This line of defence raises in turn the broader issue of Foucault's epistemes and Kuhn's conceptual paradigms, and the identification of epistemological breaks; and it requires also that account be taken of the hard relativist argument that the thought of the past is in some radical sense irrecoverable, and cannot be restated in the terms of the present.[6]

To attempt to adjudicate in this debate would be incautious: but as my own preoccupations are very close to it, it would be inappropriate to ignore it completely. One reason for the contentious nature of enquiries into meaning is that their abstract nature has encouraged scholars to treat them unhistorically (in the way in which much of the history of philosophy is treated by analytical philosophers); this may be done either by admitting (as Waswo does) the modernity of one's preoccupations about the past, or by isolating philosophical questions and treating intellectual life as in some sense insulated from social and economic issues of its day. One may, however, be able to go some way towards containing this problem by approaching issues of interpretation and meaning through law rather than, for example, theology or grammar, since the law can be studied historically as the remedy for an existing social mischief: when the French jurist François Baudouin wrote in 1562 'leges bonae ex malis moribus natae sunt' (good laws are born of evil behaviour) he was not only quoting an Erasmian adage, but also alluding to the religious and civil conflict of his own

[3] 'Is Valla an ordinary language philosopher?', *Journal of the history of ideas* l (1989), 309–23.
[4] *Language and meaning*, pp. 96ff. This argument may also be found in Donald R. Kelley, *Foundations of modern historical scholarship: law and history in the Renaissance*, New York and London, 1970, pp. 29ff.
[5] Waswo, 'Motives of misreading', *Journal of the history of ideas*, l (1989), 324–32.
[6] For a statement of this argument relevant to this book, see Oswald Ducrot, 'Quelques implications linguistiques de la théorie médiévale de la supposition', in *History of linguistic thought and contemporary linguistics*, ed. Herman Parret, New York and Berlin, 1976, pp. 189–227 (esp. p. 227).

day, and its connection with the social evil of defamation.[7] One is thus able to situate historically his preoccupation with such perennial issues as the following: how may the intention behind an utterance be established? By what criteria may the law determine some words and phrases to be actionable as slander and others not? How are the implications of a given utterance to be assessed? By what criteria may the prevaricative use of language (that is, the use of language to mislead as to intention or truth)[8] be overcome?

All these questions (as well as others) arise not only in the case of defamation, but also in that of contracts, promises, wills and intentions of legislators; and they are discussed both in theoretical and practical contexts; that is, both in the interpretation of written law and evidence, and in its application in the courts. The material available for the study of such topics is practically limitless; to examine theories of interpretation and meaning in Renaissance jurisprudence would thus seem to constitute a hopelessly ambitious task: 'arduum quidem et infiniti laboris opus', as Jean Bodin put it. 'Who', asked one writer on interpretation, 'could think of writing a history of hermeneutics, so defined?'[9] The great German legal historian Helmut Coing offers, it is true, some crumbs of comfort by declaring that in the Renaissance there is virtually no connection between the theory of legal interpretation and the practice of the courts as this is enshrined in *consilia*;[10] his assertion would seem to licence a study of either legal theory or positive law, but not both. In recognition of this, the major part of this book is concerned with theory on the Continent where Roman law (the Corpus Juris Civilis) is authoritative; but I have ventured also to take a sidelong glance at practice in England, because historical and political contexts can be more directly perceived in a system which operates neither solely nor principally with a body of written statutes or rules. The purpose of

[7] Baudouin, *Ad leges de famosis libellis et de calumniatoribus, commentarius*, Paris, 1562, p. 5; see also Erasmus, *Adagia*, Frankfurt, 1643, p. 557, citing Macrobius, *Saturnalia*, iii.17.10 ('vetus verbum leges inquit bonae ex malis moribus procreantur').

[8] On prevarication see John Lyons, *Semantics*, Cambridge, 1977, i.5–10, 74–85; Umberto Eco, *A theory of semiotics*, Bloomington, 1976, p. 7.

[9] R.E. Palmer, *Hermeneutics*, Evanston, 1969, p. 37.

[10] In *Studi Koschaker*, I (1954), p. 73; cited by Norbert Horn, *Aequitas in den Lehren des Baldus*, Cologne and Graz, 1968, p. 2; see also O. Gierke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien*, Breslau, 1880, p. 27, cited by Samuel E. Thorne (ed.), *A discourse upon the exposicion and understanding of statutes . . .*, San Marino, 1942, 'Introduction', p. 29.

this digression into England is to enquire whether the same conceptual problems are encountered as in the areas in which the Corpus Juris Civilis is authoritative; and, if so, whether these problems arise from a common legal context, or from a common intellectual heritage facing a similar crisis.

To raise the issue, however fleetingly, of the relationship of legal theory to practice prompts the questions: is the law nothing but practice? Are references to interpretative techniques and principles no more than verbal decoration helping to disguise the unpalatable fact that the law reaches context-bound decisions possibly under the influence of politics or ideology? This has been suggested recently by critics of modern legal systems;[11] it accords well with a certain hoary distaste for theorizing commonly attributed to lawyers. After all, it is the function of courts to reach decisions and to show the law to be workable; to do this judges may have recourse to compilations of interpretative rules or definition of terms (such as D 1.3, D 50.16, and D 50.17), but they are not committed to the belief that such compilations are either complete or even internally consistent; indeed, they may well be of more use in providing *ex post facto* justifications for decisions if they are not. That such use of interpretative theory was made in the Middle Ages or Renaissance seems to me clear and undeniable; writers of *consilia* and treatises on interpretation have recourse to a relatively small anthology of references (see below 1.4.5) which contain maxims to support contrary arguments: thus, the legislator's intention may be prized above the literal meaning of the text, or the literal meaning above intention (D 1.3.17, D 50.16.6.1; D 32.25, D 40.9.12); the facts of the case can be prized above the written record, or the written record above the facts (D 33.2.19); laws may be extended in application to *casus omissi*, or all extension disallowed. It is frequently claimed that the Middle Ages and early Renaissance particularly relished the citing of authority in support of argument; but it is still in some sense the case today, for reference is frequently made in decisions to convenient earlier judgements. Does this mean that semantics is no more than a context-bound and pliable pursuit for lawyers? And does this render invalid any conclusions about theories of meaning made on the basis of evidence drawn from legal texts? I venture to argue not; for the law, as

[11] See Peter Goodrich, *Legal discourse: studies in linguistics, rhetoric and legal analysis*, London, 1987; *Post-modern law: enlightenment, revolution and the death of man*, ed. Anthony Carty, Edinburgh, 1990.

well as being a practice, is a discipline: it is taught, and its teachers choose not to characterize it as an arbitrary or politically biased practice which has recourse to linguistics only to veil the naked application of interest. There is, moreover, a strong presumption, if not of the rationality, then at least of the reasonableness of the law, which implies that the law can be described according to quasi-objective canons and, above all else, be discussed and argued over, as is only appropriate to an adversarial system. Finally, explanations of language use which are offered and systems of interpretation which are sketched out are testimony to the conceptual parameters of those who proffer them: and one might venture to claim that they are testimony not only to the general problematics of a period but also of the specific problematics of the legal profession at that time.

There are, of course, many excellent histories of Renaissance law, philosophy and grammar available to scholars; on the whole, these have shown scant respect for the theory and practice of interpretation and for Renaissance thinking on language, which has been described as 'jejune and simplistic cliché'.[12] It has become fashionable to argue that Renaissance writers were aware of severe problems about meaning and the construal of meaning, and about the articulation of words and things; but that this awareness emerges most clearly in sceptical or fictional discourses. The articulation of *res* and *verba* is often discussed, though they are given different senses and connotations by different historians: G.A. Padley distinguishes between them, as he distinguishes between semantics and formal grammar; Waswo, as he distinguishes between ontology and epistemology; Foucault analyses this articulation in terms of different modes of similarity (analogy, *convenientia*, *aemulatio*, sympathy); Terence Cave sees it as the distinction between the humanist yearning for substantial and full meaning (*qua* significance) and empty or inadequate semiosis.[13] Historians of law, however, rarely stray into discussion of the relationship of words to things, although some give excellent and perceptive accounts of the rôle of logical argument and inference in jurisprudence.[14] I have looked to legal texts for a discussion of

[12] Waswo, *Language and meaning*, p. 80.

[13] G.A. Padley, *Grammatical theory in Western Europe 1500–1700: the Latin tradition*, Cambridge, 1976; Waswo, *Language and meaning*; Michel Foucault, *Les Mots et les choses*, Paris, 1966; Terence Cave, *The Cornucopian text*, Oxford, 1979.

[14] See especially V. Piano Mortari, *Diritto, logica, metodo nel secolo XVI*, Naples, 1978, and *Dogmatica e interpretazione: i giuristi medievali*, Naples, 1976; Ennio Cortese, *La norma giuridica*, Milan, 1962–4; Gerhard Otte, *Dialektik und Jurisprudenz; Untersuchungen zur Methode der Glossatoren*, Frankfurt am Main, 1971.

interpretation and meaning because it is manifestly indispensable to the practice of the law, and in the Renaissance it formed an essential part of legal training. The medieval trivium of grammar, dialectics and rhetoric is acknowledged as propaedeutic to jurisprudence; throughout the Middle Ages, but especially after the rediscovery of the 'logica nova' and, later, of Quintilian and Ciceronian texts on topics, legal pedagogues and commentators write copiously and sometimes systematically about issues of interpretation and semantics.[15] But as well as being affected by the discoveries of humanists, this writing belongs to an institutional and economic context which affects it in a variety of ways. It is some of these that I have tried to chart in the first chapter. The results of this investigation may well appear meagre, but it seemed to me important to attempt to situate what are by their nature highly abstract texts both institutionally and historically.

In setting out to link abstract theory with institutional and social forces, I have strayed into the battleground of modern intellectual history, on which a war is being waged between those who would seek to reduce the importance of the social vis-à-vis the linguistic or conceptual, and those who conversely seek to make ideas epiphenomena of socio-political forces. This debate is the culmination of a century of fertile developments in this domain; since the positivist methodology of historians such as Stinzing or Paulsen, the intellectual historian has had the choice of such methodologies as Weber's *Idealtypus*, Cassirer's version of the history of epistemology, Lovejoy's history of ideas, opposed by Collingwood, the Annales school's study of *outillage mental* and *conjoncture*, Gadamer's philosophical hermeneutics, opposed by Habermas's notion of critical rationality, Kuhn's paradigm, Foucault's episteme, Skinner's razor to eliminate inauthentic historical construction, Kracauer's notion of undifferentiated historical consciousness, Bourdieu's 'field of cultural production' and finally the 'linguistic turn' referred to above.[16] It is tempting

[15] Semantics is sometimes taken to refer only to the system of linguistic communication; I have used the term more loosely here to include the consideration of speaker's meaning, hearer's meaning, questions of intention and logical problems in the language system generally.

[16] For a recent discussion of these issues, see Anthony Pagden, 'Rethinking the linguistic turn: current anxieties in intellectual history', *Journal of the history of ideas*, xlix (1988), 519–29. See also Hans Erich Troje, 'Alciats Methode', in *Der Kommentar in der Renaissance*, ed. August Beck and Otto Herding, Bonn, 1974, pp. 47–61 (esp. p. 54); and Siegfried Wollgast, 'Zur Stellung des Gelehrten in Deutschland im 17. Jahrhundert', *Sitzungsberichte der Sächsischen Akademie der Wissenschaften zu Leipzig*, cxxv.2 (1984), 3–79, for an inflexible application of Marxist analysis to intellectual history.

to begin with a voluminous *pars prima theorica* which would evaluate all these approaches comparatively; such an exercise would seem, however, over-ambitious at best, and at worst presumptuous.

Yet it is not inappropriate to sketch out the broad choices which are open to the intellectual historian in this respect. If he accepts the hard relativist line that we are totally cut off from the past, then he is committed to the view expressed by Waswo that the past is the creation of our questions about it; we may think that we have some objective access to it, but this is a delusion; we are permanently imprisoned in our own conceptual paradigm and are animated by our own ideological concerns. A less severe view (that which might be adopted by the Annales school, or perhaps by Kuhn) would concede that we cannot aspire to a perfect knowledge of the past, but that it is possible to recreate a verifiable if approximate model of past thought which is not merely a reproduction of our own *mentalité*; we are thus able to identify some of the ideological investments of a given period which would have been invisible to those living at the time, and can even hope to expose confusions and contradictions in the thought of past generations. An even more optimistic position is taken by those who would argue that we are no more cut off from the past than we are from each other, because although we all experience different psychic events when we think, we are none the less capable of thinking the same thoughts. This optimistic view implies, if it does not entail, that the more that is known about the past (i.e. the more thoughts of the past that are recovered), the closer we can come to a significant reliving of past *mentalités*. It implies also that access to past thoughts or *mentalités* might best be gained by those who study the same discipline – in our case, the law – as the historical objects of study. It entails furthermore that past thinkers, if confronted with the contradictions in their conceptual schemes or the ideological investments in their view of the world, would be able to recognize these and appraise them as can a modern scholar. To put this in legal terms: a legislator would be able to apply his law to circumstances he did not envisage at the time of legislation if asked to do so. This last view – the view of the intellectual optimist who believes in the accessibility of the past – finally presupposes that as an adequate account of the thoughts of others can be given, the safest means of acquiring those thoughts is to stick to what they explicitly say.

None of these positions is unproblematic. A hard relativist stand may be theoretically irrefutable, but it leaves the historian with the

practical problem that no obvious constraints remain to limit or validate any account of the past: one reading of the evidence (whatever that might be) is as good as another. The mediate position appears attractive, but it contains an inbuilt tendency to Whiggish history: by identifying ideological investments and tolerated contradictions in past thought, the historian implicitly assents to his own superiority. But the problems of the third (broadly positivist) position are even greater. It requires the historian to adopt a model of human understanding in which human beings are characterized as potentially fully aware of the limits of the conceptual scheme by which they live; that is to say, they can in some sense or other pass beyond the language system or system of metaphors through which all their knowledge comes to them. The positivist position seems further to commit the historian to the view that for all practical purposes human beings are able to express themselves and understand each other in a logically adequate way, and that failure to foresee all the consequences of an act or a thought is a sign of inevitable human frailty, but not of an intrinsic weakness in the processes of logic or of language. As the present study is designed specifically to call into question the adequacy of the system of communication and language, and to identify (in so far as this is possible) those points where the Renaissance conceptual scheme breaks down, neither the first nor the third alternatives are congenial to it. It must thus, as Montaigne says, 'vivoter dans la moyenne region'; and hope to do this without too much arrogance.

As I have already indicated, interpretation is understood as a broad term comprising various modes of mediation or transmission: it might be the reaffirmation, the recovery or even the correction of a linguistic message (this last being justified by appeal to an authority greater than the text or utterance in question, such as the principle of coherence or the intention of the writer or speaker). Such a determination of interpretation has a very modern ring to it, and is close to the classic questions of hermeneutics: does a reader of a text institute its sense or does he or she recover it? Is it possible to understand an author better than he or she understood himself or herself? In the place of these questions, Renaissance jurists might have asked: who has the authority to interpret the law? What is the nature of that authority? Does the judge who applies the law or the jurist who explicates it extend the law, or change it in any way? Is it possible for laws to change in sense and force without new legislation? In