

Introduction to the 2004 Editors’ Symposium: What Is Legal Interpretation?

LARRY ALEXANDER*

In 2004, the Institute for Law and Philosophy at the University of San Diego School of Law¹ joined forces with the San Diego Law Review to host a symposium, entitled “What Is Legal Interpretation?,” the written product of which appears in this issue of the Review. The symposium brought to campus a prominent international collection of legal theorists, philosophers, and theorists of language, about half of whom were inspired by the discussion at the symposium to write original papers after its conclusion for publication in this issue.

In an earlier, though recent, issue of the Review, Professor Sai Prakash and I published an article on legal interpretation in which we defended the thesis that all interpretation properly so-called seeks to uncover the intended meaning of the author(s).² (We belong to that much maligned camp called “intentionalists.”) Although we did not

* Warren Distinguished Professor, University of San Diego School of Law.

1. The Institute’s Executive Directors are Professor Steve Smith of the School of Law and I. The other Directors are Professors Richard Arneson and David Brink from the Philosophy Department at the University of California, San Diego, who also have appointments in our School of Law, and Professor Maimon Schwarzschild of the School of Law. Affiliated Scholars of the Institute are: from the School of Law, Don Dripps, Dan Rodriguez, and Chris Wonnell; from the Philosophy Department at the University of San Diego, Matt Zwolinski; from the Philosophy Department at the University of California, San Diego, Dana Nelkin and Sam Rickless; and from the Philosophy Department at the University of Arizona, Connie Rosati.

2. Larry Alexander & Saikrishna Prakash, “*Is That English You’re Speaking?*” *Why Intention Free Interpretation is an Impossibility*, 41 SAN DIEGO L. REV. 967 (2004).

reprint our article for this issue, it was part of the readings assigned for the symposium, and it does appear as a foil in several of the pieces that follow.

Thus, Walter Sinnott-Armstrong begins the symposium with an attack on the arguments that Prakash and I put forward in our article and a qualified defense of the “textualist” position that we had sought to discredit.³ He is followed by Jeffrey Goldsworthy, who criticizes the alternatives to intentionalism, such as literalism on the one hand, and “natural law” and “Dworkinian” theories of legal interpretation on the other.⁴

Sam Rickless, Kent Greenawalt, and Adrian Vermeule follow Sinnott-Armstrong and Goldsworthy with more pluralist approaches to legal interpretation. Rickless and Greenawalt take explicitly pluralistic approaches in which the legal author’s intentions, ordinary word meanings, and moral values all play a role in interpretation.⁵ Vermeule, on the other hand, is more concerned with epistemology than with ontology. That is, his focus is not on whether statutes mean what their authors meant by them (intentionalism), or whether they mean what textualists claim they mean, but is rather on what are the best methods for getting statutes’ meanings right over the full array of cases.⁶ He argues, for example, that even if one is an intentionalist, consulting all the evidence that bears on legislative intent may lead to more errors regarding that intent than, say, consulting only the text and dictionaries.

The articles by Stanley Fish and by Steven Knapp and Walter Benn Michaels take up the intentionalist cudgel against the textualists like Sinnott-Armstrong and the pluralists like Rickless and Greenawalt.⁷ Their positions in defense of intentionalism and in opposition to other interpretive theories are very close to the position Prakash and I defended and that Sinnott-Armstrong attacks. Jeffrey Goldsworthy, in a second contribution to this symposium, responds to this strong intentionalist position with his defense of “moderate intentionalism.”⁸

3. Walter Sinnott-Armstrong, *Word Meaning in Legal Interpretation*, 42 SAN DIEGO L. REV. 465 (2005).

4. Jeffrey Goldsworthy, *Legislative Intentions, Legislative Supremacy, and Legal Positivism*, 42 SAN DIEGO L. REV. 493 (2005).

5. Samuel C. Rickless, *A Synthetic Approach to Legal Adjudication*, 42 SAN DIEGO L. REV. 519 (2005), Kent Greenawalt, *A Pluralist Approach to Interpretation: Wills and Contracts*, 42 SAN DIEGO L. REV. 533 (2005).

6. Adrian Vermeule, *Three Strategies of Interpretation*, 42 SAN DIEGO L. REV. 607 (2005).

7. Stanley Fish, *There Is No Textualist Position*, 42 SAN DIEGO L. REV. 629 (2005); Steven Knapp & Walter Benn Michaels, *Not a Matter of Interpretation*, 42 SAN DIEGO L. REV. 651 (2005).

8. Jeffrey Goldsworthy, *Moderate Versus Strong Intentionalism: Knapp and Michaels Revisited*, 42 SAN DIEGO L. REV. 669 (2005).

The final two papers do not engage in defenses of any of the various positions taken by the previous articles. Dennis Patterson, instead, discusses an “interpretive” approach to law and legal practice generally rather than to the specific enterprise of assigning meanings to the canonical language of constitutions, statutes, administrative rules, wills, contracts, and so forth.⁹ And Miranda McGowan argues that legal practitioners can do without a theory of legal interpretation.¹⁰

I believe that you will find this collection of articles quite provocative and edifying and will agree that the 2004 Editors’ Symposium was a great success. I should also say that it is the intention of the Institute for Law and Philosophy and the San Diego Law Review to make such symposia annual events at the law school. Indeed, the 2005 Editor’s Symposium on The Meaning of Marriage was held in January of this year and produced articles that rival this collection in quality. Those articles will be published in the Law Review later this year as the 2005 Editors’ Symposium.

In seeking to make an annual Editors’ Symposium a reality, the Institute and the Law Review have worked to build a permanent endowment sufficient to finance it. To that end, we have solicited (and shall continue to solicit) donations from all former editors of the Law Review. Those who have contributed to date are listed at the beginning of this issue. We are very, very grateful for your generosity and hope this product vindicates our seeking your support. Thank you.

9. Dennis Patterson, *Interpretation in Law*, 42 SAN DIEGO L. REV. 685 (2005).

10. Miranda Oshige McGowan, *Against Interpretation*, 42 SAN DIEGO L. REV. 711 (2005).

