Response: Interpretation Is Not a Theoretical Issue

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Let me begin by taking up three issues raised by Professor Seaton: (1) the relationship between interpretation and intention; (2) the relationship between literary and legal study; and (3) the relationship between theoretical accounts of a practice—law, literature, or anything else—and the performance of that practice. For Professor Seaton, these and related topics fall under the general rubric of "theories of interpretation," and he promises at the beginning of his paper to explore the theories of interpretation articulated by Dworkin, Fish, and Posner. The first thing to say is that I don’t have a theory of interpretation, or, rather, my argument concerning interpretation is that it is not the kind of thing you could have a theory about, if by "theory" you mean some general account of the process such that anyone persuaded of it would have some notion of what to do—how to proceed, how to make decisions or evaluate evidence—the next time a task of interpretation was called for. I certainly have something to say about interpretation, and while I think that what I have to say is true—it is an accurate description of what interpretation is—it is not helpful; it does not give you any direction in addition to or superior to the direction you already have by virtue of being a situated member of a practice. That is why it is not a theory; most people who look to theories look to them for guidance and my account of interpretation offers none.

Here it is: To interpret something is to determine what its author (or authors) intend. Whether I am offering a reading of Milton's Paradise Lost or of Shaw v. Reno, I am in the business of specifying, as fully and accurately as I can, what it is the author was getting at, meant to say, desired to communicate, had in mind, etc. I have elsewhere elaborated and defended this position against the

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objections one might put to it, and there is insufficient space here to rehearse my arguments, but a few points probably should be made. First, the thesis that interpretation is the attempt to determine intention in no way privileges the author as an interpreter. The husband who says to his wife, “Where is the book I have been reading?” may at the moment of utterance believe that he intends only to ask a question or to ask for help, but his wife may hear him as speaking out of hostility and making an accusation (“You’ve put my book somewhere”). In the “discussion” that might follow, he may become convinced that she is right, in which case he would revise his understanding of what his intention was. Or, alternatively and more likely, he might dig in his heels and complain that he was being misunderstood. Notice that the complaint could not be that his words, in and of themselves, were being misunderstood. “Where is the book I have been reading?” presents no interpretive difficulties or ambiguities of that kind. Rather, the husband’s complaint would be that his intention—the spirit or purpose of his utterance, the nature of the speech act being performed—was being misunderstood.

This brings me to my second point: Words in and of themselves do not declare the intention within which they are to be heard and read. Rather, the intention must be supplied by the interpreter—by the wife who believes her husband to be a certain kind of person or the husband whose self image is, at least at the beginning, quite different—and it will be in relation to that imputed, and debatable, intention that the words will seem to have an obvious meaning. Nor can one suspend the assigning of intention and allow the words to speak for themselves. In the absence of an intention already assumed, the words will not speak at all, but will be just random marks or noises. So (1) the assignment of intention is indispensable to, indeed indistinguishable from, interpretation, and (2) the assignment of intention can be, and often is, the occasion for dispute, and for a dispute that cannot be settled by pointing to the words since the words will only say what they will say in the light of an intention, and will say different things in the light of different intentions.

That is why this account—not theory—of interpretation is of no help when one is faced with the task of interpreting; knowing that it is intention you are after does not lead you to it. What will lead you to it is whatever you think to be evidence of it—letters, past behavior, public records, horoscopes, medical conditions, marital

conditions—and since your notions of where the evidence of intention is to be found will be disputable—others will seek it elsewhere or believe, mistakenly, that the text supplies it—the fact that both you and your rival interpreters are in search of the author's intention in no way narrows the possible scope of disagreement between you. Indeed, that area of disagreement can include the nature of the intending agent. One can, in common-sense fashion, think of intentions as the property of individual speakers; and within that assumption one can think of it as a deep property, as a function of the unconscious rather than the conscious mind, and therefore as something that must be ferreted out with the aid of psychoanalysis. Or, one can attribute intentionality to a long-established practice or professional culture and argue, for example, that the law embodies an intention and that individual lawyers and judges take on the law's intentions when they set out to do a job of legal work. Or, one can think of intentions as the result of the Holy Spirit working within you, and believe, as Jeremiah and St. Paul did, that when they speak it is as the vehicle and sounding board of a higher power ("Not me, but my master in me").

Now, it might seem that with such variability and room for dispute, the assertion that to interpret is to specify intention isn't doing much work, and is especially not doing the work of constraint. But that would be a mistake. The constraint imposed by the identification of interpretation with the search for intention is the constraint against searching for something else—for contemporary political relevance or the confirmation of one's preferences—and also the constraint against searching for nothing in particular but just seeing what you can do with words. If I amuse myself by taking every third word of a text and seeing what I can make of it, I may produce interesting patterns of meaning and imagery, but I will not be interpreting unless I believe that the author—a cryptographer or God perhaps—employed every third word as code readable only by those who discover its key, that is, its intention. And when, at the height of World War II, a famous literary critic read *Paradise Lost* as an allegory of the war,

what they turn up—structures of metaphor, narrative, even novelistic techniques, rhetorical strategies as old as Aristotle and as new as those uncovered by the New Historicism—what they turn up may well tell us something illuminating about what goes into the effort to argue a case or deliver an opinion, but it will not be a contribution to that effort, nor will it have a strong claim on legal practitioners unless for entirely contingent reasons they have become interested in what literary critics are now doing.4

The reason—and it is a reason that links my argument about intention to the question of the relationship between disciplinary labors—is that the efforts of workers in different disciplines proceed from different purposes. Just as you can’t make sense of an individual’s utterance without assuming an intentional context from which his or her words issue and in relationship to which they are intelligible, so you can’t make sense of—or evaluate—the arguments and actions of disciplinary agents unless you have identified and held fast to the institutional purpose in relation to which those arguments and actions have been produced. I call this thesis “the thesis of the distinctiveness of tasks.” The location of that distinctiveness is not in the medium in which the task is prosecuted (both legal and literary analysts take words as their objects) or the resources at their disposal (everyone uses metaphors, analogies, ironies, even allegories), but in the purposive context that allows a practitioner to know that he or she is doing this and not that—critiquing an opinion and not explicating a poem—and this distinctiveness obligates a critic to assess what the practitioner has done in relation to that context and not some other. It is certainly true that the opinions of great judges—Holmes and Cardozo come easily to mind—can be admired and accorded high marks by literary critics, and it is equally true that poets and novelists—Shakespeare and Dickens are obvious examples—can be appreciated for their insights into legal issues and for the skill with which those issues are dramatized in their writings. But pleasing literary critics is not what Holmes and Cardozo set out to do, and, conversely, legal materials and concerns were but the means for Shakespeare and Dickens to quite different ends, and while praise and blame can be conferred on a practitioner from almost any angle, the angle that matters is the one from which he or she thinks to do a particular job, be it literary, legal, military, culinary, political, medical, pastoral, historical, sociological, anthropological, philosophical, and so on. It is always possible, of

course, to look from one angle at that which has been produced from another; but while that look will often yield fascinating results, it will shed little or no light on the success or failure of the task being attempted, unless the imperatives of that task are themselves guiding that look, in which case it will be a look not from a different angle, but from the same angle, the same controlling purpose.

But, someone might object, why confine yourself to so narrow a sense of purpose and therefore arbitrarily limit the capacity of one enterprise to connect up with and enrich another? Couldn’t there be an overarching purpose, a goal more general in the context of which activities nominally distinct, as the literary and the legal are nominally distinct, might be brought together to the benefit of each? Yes, of course, there could, but the ability of any such larger capacity to illuminate a specific practice is in an inverse relation to its generality: The more abstract the lens, the less purchase it provides on the mechanics of any particular performance. It may at some level be true that literature and the law are alike efforts to realize human potential or to bring order to the contingency of experience or to promote true equality or to raise the banner of principle against the pressures of narrow partisan interest, but once you have said something like this, there is nothing else to say, or (it amounts to the same thing) you can say anything you like, freed as you now are from the disciplinary perspective—the institution-specific purpose or attention—you have so bravely transcended. Narrowness of focus, whether you are trying to explain the utterances of a single individual or the actions of the members of a practice, is not a barrier to understanding; it is indispensable to understanding; it is what enables both action and its assessment.

The search for a general purpose is by another name the search for a theory, the search for imperatives and justifications wider than those already contained in what Ronald Dworkin has described as the “weak constraints of practice.” But if I am right, the invocation of wider imperatives and justifications misses the institutional point and, rather than anchoring or shoring up a practice, unmoors it and leaves it to float in the empty empyrean of abstraction. Far from being weak, the constraints of practice, of intentions narrowly conceived, are enabling; and not only are they enabling, they are wholly constraining. Competent members of a practice not only already know what to do,—they need no theory to tell them—they can do nothing else, at least as long as they think of themselves as occupying this role (lawyer, baker, candlestick maker) rather than another. This is what I mean by the point Professor Seaton balks at, the denial of the distinction between making up one’s own mind and
being coerced. Of course, each of us endorses and acts on just that
distinction, but its shape will always be a function of the constraints
one has already internalized as the result of being a practice-situated
agent. There is no general sense to the concept of making up one’s
own mind. You make up your own mind with respect to some issue
and within some already-in-place notion of what coercion and
freedom—also not general but context-specific alternatives—mean
in the confines of this practice, with this history, ruled by this
purpose. You make up your own mind within the space accorded
you by a practice that already commands and fills your mind in most
respects; the mind you make up is already coerced, in the sense (not
to be lamented but embraced) that it is structured by imperatives
and goals it did not originate.

This brings me back to the original question: How do you go about
interpreting? The answer is contained in what I have already said.
Interpretation is not a theoretical issue and theory can add nothing
to the abilities we already have as members of whatever practice we
think of as ours. As a situated agent, interpretation is not something
we need worry about; it is something we are already doing by virtue
of encountering the world with practice-informed eyes, with eyes
that organize what they see, not after the act of perception, but in the
act of perception. The literary critic who picks up a poem—who
knows that it is a poem he is picking up—doesn’t have to ask himself,
“What do I do now?” He’s already doing it, and even if he has
doubts as to what interpretive direction he should take, those doubts
are themselves discipline-specific, capable of being entertained only
by those already embedded in the interpretive landscape literary
studies presuppose. And the lawyer or legal scholar who picks up a
case is already assigning it to one of the large categories (tort,
contract, first amendment) that structure his professional perception,
and within that assignment of category is already moving to place the
facts under the rubric of one or more of the sub-classifications
(breach, third party beneficiary, promise implied-in-fact, foreseeable
injury, viewpoint discrimination, and a thousand others) by which
the range of his possible experiences is pre-ordered.

Now, the fact that interpretation is not a theoretical problem
because you engage in it merely by being a member of a practice (it
is not an additional or special activity) and because your engagement
is not a matter of choice (to opt out of interpretation is to opt out of
membership) does not mean that interpretation is free of problems
and disputed questions. Rather, it means that the questions are
empirical—questions of evidence, precedent, injury, remedy—and
because they are empirical—shaped by and responsive to the
particular histories of self-revising disciplines—there is nothing general to say about them, nothing to do but consider them as they arise in this or that moment of a discipline’s history (also empirically established). There is, in short, no work for interpretive theory to do except for the perfectly pleasant work of building its castles ever higher in the non-resisting air.