Conversational Implicatures and Legal Interpretation. On the Difference between Conversational Maxims and Legal Interpretative Criteria

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Abstract

Currently, there is an ongoing debate which involves legal scholars, as well as philosophers of language and pragmatists, about the applicability of Grice's theory of conversational implicatures to legal statutes, i.e. about the possibility of interpreting legal statutes according to Grice's conversational maxims (or maxims that are similar to Grice's ones). The aim of this paper is twofold: first, to provide a clear reconstruction of the debate at stake; second, to advance an argument within that debate. After a brief presentation of Grice's theory (§2), I will examine the arguments that have been advanced in favour of and against the possibility of interpreting legal statutes according to Grice's model (§3), and then I will argue that the dispute should be engaged on a factual level. My thesis is that even if some legal interpretative criteria have a content similar to that of conversational maxims, their functioning is totally different, because they are not based on the existence of a mutual general expectation.

Keywords: Legal Interpretation. Conversational Implicatures. Interpretative Criteria. Paul Grice. Law.

1. Introduction

Currently, there is an ongoing debate which involves legal scholars, as well as philosophers of language and pragmatists, about the applicability of Grice's theory

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of conversational implicatures to legal statutes, i.e. about the possibility of interpreting legal statutes according to Grice's conversational maxims (or maxims that are similar to Grice's ones). The aim of this paper is twofold: first, to provide a clear reconstruction of the debate at stake; second, to advance a new argument within that debate. After a brief presentation of Grice's theory (§2), I will examine the arguments that have been advanced in favour of and against the possibility of interpreting legal statutes according to Grice's model (§3), and then I will argue that the dispute should be engaged on a factual level. My thesis is that even if some legal interpretative criteria have a content similar to that of conversational maxims, their functioning is totally different, because they are not based on the existence of a mutual general expectation.

2. Grice's theory of conversational maxims: an overview

Grice claims that conversations are governed by a series of maxims aimed at guaranteeing the efficient and effective use of language with a view to interaction[1]. According to Grice, everything we say is interpreted, as far as possible, in a cooperative manner, i.e. it is interpreted as if it were an appropriate contribution to the communication in which we are engaged. For this to take place we often need to go beyond the meaning of what is said; we need to interpret what is said in a cooperative manner, or to be more precise, as though it were in accordance (at least to a certain extent)[2] with the conversational maxims at stake.

Grice identifies four maxims which, taken together, express the general cooperative principle (henceforth CP): «Make your conversational contribution such as is required, at the stage at which it occurs, by the accepted purpose or direction of the talk exchange in which you are engaged»[3]. The maxims identified by Grice are the following.

Quality:

Try to make your contribution one that is true, specifically:
1. Do not say what you believe to be false;
2. Do not say that for which you lack adequate evidence.

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[1] Grice 1989: 22-40.

[2] The clarification "at least to a certain extent" is indispensable when taking account of cases involving the so-called exploitation or flouting of the maxims: cases in which a maxim is overtly violated in order to intentionally exploit the evidence of the violation and convey a certain message. In Grice's opinion, irony, metaphors, meiosis and hyperbole fall into this category: Grice 1989: 53 ff; Levinson 1983: chap. 3.

[3] Grice 1989: 26.

Quantity:

1. Make your contribution as informative as is required (for the current purposes of the exchange);

2. Do not make your contribution more informative than is required.

Relation:

Be relevant.

Manner:

Be perspicuous, specifically:
1. Avoid obscurity of expression;
2. Avoid ambiguity;
3. Be brief (avoid unnecessary prolixity);
4. Be orderly.

Grice's theory represents a powerful instrument for the explanation of our everyday linguistic interactions: It can explain why we can perfectly understand each other, even when what we say is not, taken alone, cooperative, i.e. even when what we "literally" say does not sound by itself as if it is an appropriate response to the ongoing linguistic exchange[4]. According to Grice, it is the assumption that the maxims (or some of them)[5] are followed[6] in a certain context of utterance which allows the speaker to implicate – and the listener to infer – a certain communicative content, which is different, and sometimes, even more precise than the meaning expressed by what is said[7].

Despite its intuitive soundness, Grice's theory is not free from problems: It has been criticised and revised in many points. Let us consider more closely how implicatures work and the problems posed by this theory.

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[4] It is worth noting that the Gricean notion of "what is said" does not necessarily coincide with (a kind of) literal meaning – that is, a (somehow) a-contextual sentence-meaning. Conversely, what is said is «equivalent to the proposition expressed by the use of a sentence or the truth-conditional content of the utterance, and is in turn dependent on reference resolution, indexical fixing and disambiguation»: Levinson 2000: 171. See also Grice 1989: 31; Reimer 1998: 598; Atlas 2005: 63; Bach 1994: 124.

[5] The violation of a maxim can be justified by the respect for a different conflicting maxim: see *infra* § 4.

[6] I use the verb "to follow" in a broad sense: in particular, I do not assume that maxims are intentionally followed. I only assume that we can account for the understanding process through the maxims.

[7] I agree with the authors who claim that the maxims are also necessary to conclude that the speaker said what she said without implicating anything: «For even if what the speaker means is exactly what he/she says, the hearer must recognize this, even though that (that the speaker means exactly what he/she says) is not something that is explicitly communicated. And here too the CP plays a role: if the speaker is taken to be speaking literally, it is because that preserves the assumption that the speaker is observing CP»: Rysiew 2007: 293. C.f. also Strawson 1973; Bach 1997.

The first maxim of Quality is, according to Grice, the most important one: «[I]t might be felt that the importance of at least the first maxim of Quality is such that it should not be included in a scheme of a kind I am constructing; other maxims come into operation only on the assumption that this maxim of Quality is satisfied»[8]. Nevertheless, the first maxim of Quality is also one of the most puzzling. It seems to allow the inference from

(a) "It is raining" to "I believe that it is raining"

But (a) is not an implicature, for it is clear enough that it cannot be cancelled (and, as we shall see, cancellability is a key property of conversational implicatures): Any attempt at cancellation brings about Moore's famous paradox, "It is raining but I do not believe it"[9]. However, in Grice's system, the first maxim of quality is a necessary element, for its overt violation (i.e. its exploitation) explains phenomena like ironies and metaphors. I will not discuss this difficulty here: I will simply treat it as a pseudo-maxim[10].

While the first maxim of Quality focuses on the speaker's sincerity – on the fact that the speaker believes what she says – the second maxim of Quality focuses on the speaker's competence – on the fact that the speaker has reasons for believing what she says. According to the second maxim,

(b) "Charles has two degrees" implicates "I have evidence to believe that Charles has two degrees"

The two maxims of Quality have received special attention in epistemology: So, e.g., Rysiew has argued that they found a general presumption of the reliability of testimony[11].

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[8] Grice 1989: 27.

[9] Although this is not Grice's opinion: «When I speak of the assumptions required in order to maintain the supposition that the Cooperative Principle and maxims are being observed on a given occasion, I am thinking of assumptions that are nontrivially required; I do not intend to include, for example, an assumption to the effect that some particular maxim is being observed, or is thought of by the speaker as being observed. This seemingly natural restriction has an interesting consequence with regard to Moore's "paradox". On my account, it will not be true that when I say that *p*, I conversationally implicate that I believe that *p*; for to suppose that I believe that *p* […] is just to suppose that I am observing the first maxim of Quality on this occasion» (Grice 1989: 41-42). However, this point is questionable: Even if it is true that the first maxim of Quality is very important, it is true as well that – with the exception of the inference from "p" to "I believe that p" – this maxim does not seem to hold any specific implicature, so, *pace* Grice, it would play a role which is completely different from the one of the other maxims. Moreover, sometimes the implicatures which are governed by the other maxims seem to be nothing other than the assumption to the effect that some particular maxim has been observed: see, e.g., the example (i) in the text.

[10] Following Horn, I think that it should be better to treat the first maxim of Quality as a postulate, as a *conditio sine qua non* for «the entire conversational and implicatural apparatus»: Horn 1984: 12.

[11] Rysiew 2007: 285-304. See also Elgin 2002: 291-308.

The first maxim of Quantity generates implicatures such as:

(c) "The flag is white" normally implicates "The flag is only white"

As far as the second maxim of Quantity, Grice's original formulation seems quite odd. Grice himself concedes that

> it might be said that to be over-informative is not a transgression of the Cooperative Principle but merely a waste of time. However, it might be answered that such overinformativeness may be confusing in that it is liable to raise side issues; and there may also be an indirect effect, in that the hearers may be misled as a result of thinking that there is some particular point in the provision of the excess of information[12].

A perspicuous reformulation of the second maxim of Quantity is provided by Levinson (Levinson 2000: 112). According to Levinson, this maxim expresses our attitude to interpret every utterance on the basis of (our knowledge of) what is normal or typical. This maxim is therefore equivalent to: "Don't provide unnecessary information, specifically don't say what would be obvious anyway"[13]. In this essay, I will follow Levinson's reformulation. The second maxim of Quantity produces implicatures such as:

(d) "The spoon is in the cup" implicates "The spoon has its bowl-part in the cup"
(e) "The head office said 'Hello' to the secretary and then he smiled" implicates "The head office said 'Hello' to the female secretary and then the head office smiled"

The maxim of relation ("Be relevant") is surely an important one: It can explain a number of otherwise unintelligible linguistic interactions. Consider, e.g., the following dialogues:

(f) A: What time is it?
B: The local news has already started

(g) A: Do you know what happened to the chicken?
B: Well, the cat is licking its whiskers

It seems that these dialogues can be perfectly understood: Nevertheless, B's answers, taken alone, are completely unrelated to A's questions. But, in both cases,

12 Grice 1989: 26-27.

13 Actually Levinson's research program is totally different from Grice's one. However, I will not engage with this issue here, and I will simply consider Levinson's heuristic as an appropriate reformulation of Grice's second maxim of Quantity.

we interpret B's replies as appropriate to A's questions, i.e. as relevant. Hence, in dialogue (f), B's response can be considered appropriate to A's question in so far as, in such a context, the utterance "The local news has already started" communicates "I don't know what time it is right now – because, in accordance with the first maxim of Quantity, if I had known, I would have told you – but I can give you some information – which, in accordance with the maxim of Relation, I understand and you can understand as pertinent to your question – from which I believe that you can approximately deduct the time, that is *The local news has already started*". Similarly, in the context outlined by dialogue (g), B's response can be understood as cooperative in that it can be interpreted as "I don't know what happened to the chicken but I think the cat ate it, given that *the cat is licking its whiskers*". But what exactly does it mean to be relevant? As Grice notices

> Though the maxim itself is terse, its formulation conceals a number of problems […]: questions about what different kinds and focuses of relevance there may be, how these shift in the course of a talk exchange, how to allow for the fact that subjects of conversations are legitimately changed, and so on[14].

Finally, the maxim of Manner allows implicatures such as the following:

> (h) "The water flowed down the bank" implicates (also in accordance with the maxim of Relation) "The water flowed down the river bank" if we are talking about a trip to the countryside; instead, it implicates (also in accordance with the maxim of Relation) "The water flowed down the bank building" if we are talking about a flood in our town.
>
> (i) "Jane had a son and got married" normally implicates "Jane had a son and *then* got married"[15].

To conclude, two basic proprieties of the conversational maxims are the can-

[14] Grice 1989: 27. Grice's maxim of Relation has exerted a great influence on the succeeding literature: It can be considered as the ground of the Relevance theory, a theory developed mainly by Dan Sperber and Deirdre Wilson, which is, in many respects, an alternative to Grice's proposal. See Wilson and Sperber 1986; Wilson and Sperber 1995. For some criticisms to the Relevance Theory see Degen 2007. As far as legal interpretation is concerned, Skoczen provides convincing arguments in order to show that the Relevance theory is not applicable in the realm of law: Skoczén 2015: 351-362. In the same sense: Shaer 2013: 259-291. *Contra*: Carston 2013: 8-33 and Smolka and Pirker 2016.

[15] Actually, the implicature from "and" to "and then" is debated: In particular, it is disputed whether it is really a standard Gricean implicature (i.e. whether the conjunction "and" has a unique meaning equivalent to the logical operator "&") and/or what the conditions are under which this implicature stands: See Blakemore 1992: 80; Carston 1993: 27; Carston 1995: 213; Davis 1998: 46 ff.; Levinson 2000: 122 ff.

cellability and the awareness of computability[16]. Conversational implicatures can always be cancelled (at least, in the short term), and this is because the *implicatum* is not part of the semantic content of what is said[17]. Moreover, one should be able to compute the conversational implicatures, i.e. to show that the *implicatum* follows from a maxim along with a given context of utterance.

3. Conversational maxims and legal interpretation

In this section, I will present three main arguments advanced against the possibility of applying conversational maxims in legal interpretation: For each argument, I will report its replies.

Preliminary we have to clarify what we mean by "the possibility of applying conversational maxims in legal interpretation": this phrase can be intended, and it is intended, in at least two different senses.

First, some authors claim that Gricean maxims, or new formulations of Gricean maxims, are theoretically applicable in legal domain even if they are not actually applied. In sum, according to this position (that is not the most widespread) there is nothing in legal practice that prevents the mechanism of conversational implicatures. The opponents, instead, argue that the Gricean model is not theoretically applicable in the legal domain: i.e. that legal interpretation presents some relevant features that distinguish it from ordinary conversation and prevent the applicability of the conversational model.

Second, other theorists (and they are the most part) argue that Gricean maxims, or, more often, some maxims that are similar to Gricean ones (see §4), are, as a matter of fact, applied to legal interpretation: i.e. that the actual understanding of legal texts fit with Gricean conversational model, that legal interpretation takes place according to an inferential process that is identical or relevantly similar to that theorized by Grice. This claim clearly implies that the model of conversational implicatures is also theoretically applicable to legal domain. By contrast the opponents are required to prove that conversational model is not, as a matter of fact, applied when we interpret legal statutes.

Given the distinction above, the arguments against the possibility of applying conversational maxims in legal interpretation, that I will present in the following sections, are all theoretical arguments – i.e. argument against the abstract, theo-

[16] See Grice 1989: 31, 39-40. For a discussion on the proprieties of the conversational implicatures, see Sadock 1978: 281-298; Levinson 1983: ch. 3; Atlas 2005: ch. 2; Bach 2005: 21-30.

[17] Recently, the role of cancellability as a necessary condition for conversational implicatures has been challenged by Weirner 2006: 127-130. For some replies to Weirner, cf. Blome-Tillmann 2008: 156-160; Borge 2009: 149-154.

retical, possibility to apply Gricean model to legal interpretation. By contrast, the replies to those arguments may or may not assume that in fact Gricean model is followed by legislators and interpreters. For the moment, I will not engage with the factual question "Is Gricean model actually followed in legal interpretation?" – I will return on it on § 4 – but it must be clear that a negative answer to this question is presupposed by all the arguments we are going to analyse and only by some of the objections to these arguments.

The arguments that I will discuss, in order of increasing strength, are the following: Normative discourse is not informative (§3.1); Behind legal texts, there is not a (single, knowable) communicative intention (§3.2.); Legal context is indeterminate or opaque (§3.3).

3.1. *Normative discourse is not informative*

A first obvious reason why the maxims do not seem applicable to legal interpretation is that they are formulated with the assertive discourse in mind, or in other words, for a discourse which (i) aims to inform, and (ii) which can be either true or false. However, according to a very widespread view, norms do not aim to inform: They aim to guide behaviours, and therefore, they are neither true nor false.

This point is also noticed by Grice:

> I have stated my maxims as if this purpose [*i.e. the purpose that a talk exchange is adapted to serve and is primarily employed to serve*] were a maximally effective exchange of information; this specification is, of course, too narrow, and the scheme needs to be generalised to allow for such general purposes as influencing or directing the actions of others[18].

This argument, which holds both for legal norms and for the norms of ordinary conversation, is, surprisingly enough, underestimated in pragmatic literature[19]. By contrast, it is often addressed in legal literature: many legal theorists argue that some interpretative criteria, some canons of interpretation or construction, usually employed by judges and jurists, are exactly the legal analogous of conversational maxims. According to this latter position, some legal interpretative criteria are instances of Gricean maxims: through them the legislature can implicate and the interpreters can inference something further, or more precise, than, or different from, what is said – i.e.: from what is written in the statute (Sinclair 1985; Miller 1990; Slocum 2016; Skoczén *forth.*). I will return to these positions later on (§4). For now, it is sufficient to observe that the argument based on the normative character

[18] Grice 1989: 28.

[19] With the notable exception of Sbisà 2017: 24 ff.

of legal statutes is not decisive: surely enough, Gricean maxims can be reformulated to make them applicable to normative discourse[20].

3.2. *The Legislator's Intention*

A second argument focuses on the absence of a single, knowable, communicative intention beyond legal texts, and it runs as follows[21]: Conversational implicatures are intentional[22]: they require the speaker's intention to implicate something, and they are examples of speaker's meaning (in Grice's sense)[23]; but, behind a legal statute, there is not a unique, determined, collective intention, but very often, the members of parliaments do not even know the contents of the texts they approve (because they are technical texts drafted by experts, or simply because they do not read them and just follow the decisions of their party); more often, the members of parliaments interpret the texts on which they vote in different ways.

Several different objections to this argument have been raised.

Some authors have replied by appealing to a counterfactual legislative intention[24] or to the intention of a rational lawmaker[25]. These moves are questionable: Within the jurisprudence (especially the continental jurisprudence), the interpretative argument which appeals to an ideal (coherent, rational, exhaustive, etc.) legislator is very old, just as old as the (many) criticisms of it[26]. The following is one among many: To be rational implies choosing the suitable means to achieve the purposes one intends. But how should these purposes be chosen? Constitutionally relevant values may conflict, and the choice among them is a matter of politics, not of rationality (and pragmatics). Moreover, it is a choice that cannot be entrusted to the real intention of the (historical or current) legislator, because, as we have said, sometimes at least such an intention does not exist (or it is undetermined)[27]. Moreover, as far as counterfactual intentions are concerned, the logic of counterfactuals is highly

[20] On this point see Poggi 2016.

[21] This argument is supported by Marmor 2011; Poggi 2011.

[22] See Bach 2005.

[23] Cf. Grice 1989: 117-137 and 86-116.

[24] See, e.g., Marmor 2005, ch. 8.

[25] See, e.g., Dascal and Wróblewski 1991; Capone 2013.

[26] This interpretative canon is the core of the attitude that Bobbio called "legal positivism as theory" and that characterised the European jurisprudence of the eighteenth and nineteenth centuries: Bobbio 1961.

[27] For other criticisms to the interpretative canon based on a fictitious intention – especially in Marmor's version: see Velluzzi 2007: 279-283. Outside the Gricean debate, one of the most brilliant defences of the central role of authorities' intentions and counterfactual intentions in legal interpretation is developed by Alexander 1995. It is doubtful whether Alexander succeeded in overcoming all the concerns about the counterfactual intentions: However, a careful examination of Alexander's arguments exceeds the scope of the present essay.

problematic: Their antecedent is, by definition, false and *ex falso sequitur quodlibet.*

Other authors instead criticise the premise on which the argument is based: the intentional character of conversational implicatures. This criticism is drawn through at least three (very similar) lines of argument.

The first is the so-called Default Model, developed mainly by Levinson[28]. Levinson restates some of the Gricean maxims into three principles that can be conceptualised as heuristics, which the interlocutors follow by default, without any interpretative effort. In order to better understand the Default Model, we have to recall the Gricean distinction between generalised implicatures and particularised implicatures: Generalised implicatures are always produced, except in special circumstances, while particularised implicatures are produced only within particular contexts. For example, the utterance

(l) Some of the guests have already left

always implicates (except within very specific contexts):

(l^1) Not all the guests have left

whereas it possesses the particularised implicature

(l^2) It must be late

only in the context of the following dialogue

(l^3) A: Do you know what time it is?
B: Some of the guests have already left (i.e., it must be late)

According to the Default Model, only generalised implicatures occur automatically, by default, upon the occurrence of an implicature trigger, and thus, intrude effortlessly into the interpretation of an utterance. Therefore, as far as generalised implicatures are concerned, what is implicated does not rest on the actual speaker's intention, but rather, it rests on a heuristic that reflects the way in which people normally use language[29].

A second line of argument to neglect the intentional character of every implicature focuses on the normativity of implicitness[30]. So, according to Sbisà, implicits are meanings made available by the text that can be ascribed to the speaker (to the

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28 Levinson 2000.
29 For an application of Levinson's Default Model to legal interpretation, see Slocum 2016: 23-43.
30 Sbisà 2007; Morra 2011; Morra 2015; Morra 2016; Sbisà 2017.

speaker's intention) if ascribing them is reasonable.

> In the case of conversational implicature, the retrieval of implicit meaning is supported by reason, namely, it occurs in conformity with (though not necessarily by means of) a possible argumentative route (which comprises the assumption that the Cooperative Principle and one or more of its maxims hold, and possibly, further contextual information)[31].

In this picture, the "real" intention of the speakers plays no role in the process of understanding; rather, it is a result of this process: What counts is the intentions that can be ascribed to the speaker on the basis of the text itself and the rules and reasons that support our understanding of what is presupposed or implicated.

In previous essays, I have developed a third strategy to challenge the intentional character of every implicature: a strategy focused on the idea of conversational maxims as (formulations of) customary hermeneutic technical rules[32]. According to von Wright's classification, technical rules (or directives) indicate a means to reach a certain goal, aiming not at directing the will of the receivers, but at indicating that their will is conditioned: In other words, if they want to reach a certain goal, then they must maintain certain behaviour[33]. The CP and conversational maxims then can be formulated in the following way:

> (TR) If you want to cooperate and you want to understand and be understood, then you must follow the CP, that is m, m1 ,…

where "m, m1 ,…" stands for the contents of each maxim. According to this model, we apply conversational maxims by default when we try to understand and make ourselves understood.

The three lines of argument above are very similar[34]. The basic idea that stands behind them is that maxims are rules (of a certain kind) that we usually follow in understanding others' discourse, regardless of whether the speakers manifested

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[31] Sbisà 2017: 29.

[32] Poggi 2011; Poggi 2016.

[33] von Wright 1963: 9 ff.

[34] But they are not identical: Unlike Levinson, I assume that also generalised implicatures are context-sensitive, not only in the sense that the context can delete them, but also in the sense that, in some contexts, they are not produced at all (on the relevance of this disagreement see: Degen 2007). In such cases, it is not that the maxims do not work; rather, the maxims work, but the maxims themselves are context-sensitive. Instead, Sbisà's account rejects the idea that implicit meanings are always context-dependent: She excludes from the concept of "implicit meaning" every assumption that is shared by the speaker and the addressees, but is not indicated in the text in such a way as to make it retrievable (Sbisà 2017: 26) – so even particularised implicatures seem to be excluded.

their intention to follow them[35]: This intention is, in some way, presumed until proven otherwise, and, indeed, maxims are the tools through which we attribute intentions to speakers. To clarify this point, consider the following dialogue:

(m) A: When I arrived at the party, some guests had already gone
B: Who remained?
A: Nobody

According to the three lines of argument above, by uttering "some guests had already gone", A implicates "not all guests had already gone", regardless of what she intends to implicate. A violated the first maxim of Quantity, and in doing so, she caused the failure of the talk exchange: But she caused it precisely because B (like everybody else) took it for granted that she was following the maxims. Within this picture, the process of understanding appears as an inference to the best explanation of what a cooperative speaker – i.e. a speaker that follows the conversational maxims – intends to communicate in a given context[36]. But, if the speakers is not actually cooperative, then the result of this inference does not correspond to her real communicative intention and therefore the communication fails.

All the previous remarks can weaken the role of legislative intention, or better, they can minimise the problems related to the absolute indeterminacy of legislative intention (whether it is real or fictitious or counterfactual or ideal)[37].

3.3. *Legal Context*

The last argument against the applicability of Gricean maxims to legal interpretation focuses on the insurmountable indeterminacy of contextual elements[38]. In Grice's account, maxims are context-sensitive: They produce different *implicata* in different contexts. By "contexts", a broad set of assumptions is meant that includes Searle's Background[39], the context of utterance (*Who? When? How?*), different kinds of common knowledge, and above all, the co-text (the dialogue, the sequence of utterances in which a given utterance occurs). Unlike ordinary conversation, legal interpretation presents a character that is, in some way, "a-contextual". More specifically, the statutes will be applied to many future cases, and therefore, the context

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[35] A similar (but not identical) thesis has been sustained by Green (2002 and 2007) and, to some extent at least, by Saul (2002a and 2002b). Contra cf. instead Bianchi 2011: 16-29.

[36] See Atlas and Levinson 1981; Macagno, Walton, and Sartor 2018.

[37] Actually, if we follow the Default Model or Sbisa's thesis of the normativity of implicitness (see footnote 39 above), the role of legislative intention is not relevant only as far as generalised implicatures are concerned.

[38] See Poggi 2013.

[39] Searle 1978 and 1980.

in which they will be interpreted is structurally opaque[40]. Above all, the co-text – the system of norms that will be considered relevant in order to interpret a statutory provision – is undetermined: It must be reconstructed, and it may be reconstructed in several different ways. This point must be examined more thoroughly.

In legal interpretation, the co-text plays a central role: It is trivial that legal provisions are not interpreted taken alone (which would produce absurd results), but within the systems formed by other legal provisions. These "reference-systems", these legal co-texts, do not normally coincide with the whole legal system (which would be inefficient and useless), but with variously delimited sub-sets of legal provisions. The problem is that these sub-sets can be reconstructed in various ways, and it can be impossible to establish which way is better. Moreover, each sub-set can be interpreted in various ways, according to various interpretative criteria, and here again, there is not one "true" interpretation. Now, depending on how the legal co-text is constructed and interpreted, the same legal provision produces different implicata (or no implicatum at all). I will provide a brief example from Italian law.

Statute n. 6/2004 introduces a new form of support (the so-called "*amministrazione di sostegno*", i.e. support administration) in favour of persons who, although not declared legally incapable, are not able to administer their assets. A legal provision regulates the judicial procedure to appoint the support administrator without prescribing that this procedure requires the participation of the defence lawyer of the person in question. Some judges decided that this participation is not necessary: They assumed, as legal co-text, the sub-set formed by Statute n. 6/2004 *plus* some constitutional rights, and in Grice's terms, they concluded that what is said is cooperative, i.e. that the legislature has respected (some normative version of) the first maxim of Quantity and, therefore, that Statute n. 6/2004 provides a complete regulation. However, other judges decided that the participation of the defence lawyer is necessary, because in this field, the provision of par. 82 of the Italian civil procedure code – which prescribes, in general, the necessity of a lawyer's assistance – must also be applied: They constructed the relevant legal co-text as consisting of Statute n. 6/2004 *plus* some constitutional rights *plus* par. 82 In Grice's terms, they concluded that what is said by *this* last set is cooperative, and in particular, that Statute n. 6/2004 has respected (some normative version of) the second maxim of Quantity: Par. 82 being applicable, the Statute does not provide "over information".

Other cases that show how the different ways of reconstructing the context affect the implicatures concern the "real" intention of the historic lawgivers, as publicly manifested: Sometimes, judges take this intention into account, whilst other

[40] As Skoczen writes: "The time gap between the uttering of the speaker (here the legislature) and the interpreting of the utterance by a hearer (the courts) in particular provides legalese with a unique and descriptively challenging trans-contextual character" (Skoczén 2015: 360).

times, they do not. In these cases, the implicatures are different because the context from which they are drawn is different.

A first reply against this argument focuses on Levinson's Default Model or on the normativity of implicitness. As we have seen, according to these approaches, generalised conversational implicatures are not context-dependent; therefore, it is argued that they always occur in legal interpretation, no matter how the relevant context is built.

This reply is not convincing. First, according to Levinson and Sbisà, a generalised conversational implicature can also be cancelled by a special context. So, e.g.,

(n) Is the flag red?

normally implicates

(n^1) Is the flag only red?

However, this implicature does not arise (or, better, according to Levinson, it is cancelled) if this question is posed by my cousin in front of a black and red flag, since I know (and he knows that I know) that he is colourblind, and he cannot distinguish red from green and brown, while he sees black without a problem.

Second, according to these approaches, generalised implicatures depend on what is said, on the text. E.g., Sbisà claims that implicits are those assumptions that the text make available to the participants, so that they can work them out as a part of their understanding the text[41]. However, as we have said, in legal interpretation, it would be absurd to interpret a single legal provision alone: We must identify the "relevant" text, we must decide whether this relevant text includes only the single statute or also other legal provisions and which ones. Therefore, all the above problems re-emerge.

A second different kind of reply emphasises that the cases in which the context is not clear and can be reconstructed in different ways are quantitatively few: Usually, judges agree about the relevant co-text, or there is a reconstruction clearly preferable to the others[42]. This kind of reply seems to open a factual dispute, that now is time to address.

4. A factual question: legal interpretative criteria as Gricean maxims?

To sum up, among the arguments against the applicability of Grice's model to legal interpretation, the one based on the indeterminacy of the legal context seems

41 Sbisà 2017: 26 ff.
42 See, e.g., Ekins 2012.

the most convincing: However, it is not irresistible. One can object that in most cases legal context is clear enough and/or that even in ordinary conversation the context is often indeterminate, but this fact does not undermine the strength of the CP: even when the context is indeterminate the speakers follow the maxims, but, in this case, following the maxims does not guarantee the success of the communication.

As I've anticipated, many authors claim that Gricean maxims correspond (more or less) to traditional criteria of legal interpretation[43]. According to this view, in order to grasp the meaning of a statute legal interpreters employ some well-established criteria, exactly those criteria that the legislature, in enacting the statute, expects they will employ and that interprets know legislature expects they will employ. So, both interpreters and legislators rely on the very same interpretative criteria: criteria that, sometimes, enable to convey a further meaning than what is written in the statute. Clearly this move shifts the debate on factual questions: Does legal interpretation comply with Grice's theory of conversational implicatures? Are the interpretative criteria commonly applied by judges, lawyers and other legal interpreters relevantly similar to Grice's conversational maxims? Or, better, do legal interpretative criteria play in legal interpretation the same role as conversational maxims in ordinary conversation?

Many authors answer these factual questions affirmatively, arguing that some «maxims of statutory interpretation can be viewed as instances of Grice's general framework of interpretation»[44]. So, e.g., in his seminal work Sinclair claims that Grice's four maxims correspond to the following well-known legal criteria[45]:

> Quality:
>
> 1. Do not enact a provision that can be shown not to further the legislative purpose
> 2. Do not enact a provision when there is no adequate evidence that it furthers the legislative purpose
>
> Quantity:
>
> 1. Make each provision cover all the persons and actions you intend it to
> 2. Make each provision cover only the persons and actions you intend it to and no more
>
> Relevance:
>
> Be relevant to the scope of the statute
>
> Manner:
>
> Use the words the literal meaning of which gets closest at what you mean

[43] Sinclair 1985; Miller 1990; Morra 2011; Carston 2013; Slocum 2016; Morra 2015; Morra 2016; Macagno, Walton and Sartor 2018; Skoczén *forth*.

[44] Miller 1990: 1182.

[45] Sinclair 1985.

Or, to provide another example, Miller proposes the following, different, more complicated, and less clear matching scheme[46]:

> Quantity:
>
> 1. *expression unius est exclusion alterius*; principle of the negative pregnant; statutes in derogation of common law should be strictly construed; repeals by implication are not favoured; a court should defer to long-standing judicial or administrative interpretation; legislative re-enactment of a statute endorses long-standing judicial or administrative interpretation; a clear statement is required for federal regulation of matters traditionally governed by state law; administrative agencies have greater discretion to interpret general statutes than specific statutes; the plain meaning of a statute ordinarily governs.
> 2. *Ejusdem generis*
>
> Quality
>
> 1. Interpret statutes to avoid absurdity; interpret statutes to give agencies reasonable and necessary powers to effectuate their statutory duties
> 2. In cases of economic regulation, courts should defer to legislative factfinding and should uphold statutes if the statute can be characterized as reasonable; in cases involving fundamental rights or suspect classifications, courts should not defer to legislative factfinding, but should instead require a close fit between legislative means and ends.
> 3. Give effect if possible to every word of the statute
> 4. Reconcile conflicting statutes if reasonably possible
>
> Relation
>
> 1. *In pari material*
> 2. Statutes should be interpreted in light of the legislature's purposes
>
> Manner
>
> 1. Court should interpret words according to their ordinary, common senses; Court should give legal words their established technical meanings
> 2. The plain meaning of a statute ordinarily governs
> 3. Give effect to every word the legislature used; *expressio unius est exclusio alterius*
> 4. Be orderly

It is undeniable that, with the exception of some maxims proposed by Miller that apply only in United States, the criteria above are employed in legal interpretation and legislators are supposed to know that they are employed. So far so good, but the question still stands: do these shared, well-established interpretative criteria play in legal interpretation the same role as conversational maxims in ordinary conversation?

[46] Miller 1990.

As Chiassoni points out[47], in legal interpretation different interpretative criteria produce different interpretative results, and the choice among them is discretionary. So, e.g., Sinclair's maxims of Quality can collide with both his maxims of Quantity and his maxim of Manner, and, in Miller's apparatus, the first sub-maxim of Quantity and the second sub-maxim of Manner are inconsistent with the second maxim of Relation. Does not the same also happen in ordinary conversation? Yes and no.

In ordinary conversation, maxims can conflict, but sometimes, the conflict is only apparent, and some other times, we know by default which maxim should be preferred.

Consider the following example proposed by Grice: "A: Where does C live? B: Somewhere in the South of France". In this case, there is

> no reason to suppose that B is opting out, but his answer is, as he well knows, less informative than is required to meet A's needs. This infringement of the first maxim of Quantity can be explained only by the supposition that B is aware that to be more informative would be to say something that infringed the second maxim of Quality[48]

Here, the conflict is only apparent: B does not violate the maxim of Quantity because she provides the maximum information that she can provide without violating the maxim of Quality.

Other times, the conflict is real, especially when the maxims of politeness are involved[49]. However, in ordinary conversation, most of the time, we intuitively know which maxim must prevail. Levinson and Lakoff, e.g., try to figure out these meta-criteria for conflict resolution[50], and I think their proposals work quite well, although not always: Sometimes, the conflicts are real and cannot be resolved.

I think that, as far as legal interpretation is concerned, things stand differently. In most legal systems, the conflict between the various interpretative criteria is pervasive and physiological: It is the praxis and not an extraordinary violation. Different judges apply different maxims, or none of them, to the very same legal provision.

In a recent essay, Macagno, Walton and Sartor maintain that

> the arguments of legal interpretation and the conversational maxims represent distinct levels of analysis of the reasoning underlying an interpretative dispute. The le-

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[47] Chiassoni 1999: 92 ff.

[48] Grice (1989, pp. 32-33). For a critical discussion see Atlas (2005, pp. 71 ff.).

[49] If a friend asks "How do I look in this dress?", answering "You look like a striped whale" may be true (maxim of Quality), but not polite, and answering "You look very fine!" is polite, but violates the maxim of Quality; answering "I prefer the black one" is quite polite, but it violates the first maxim of Quantity.

[50] See Levinson 2000: 39 ff. and Lakoff 1973.

> gal arguments can be used to point out the various perspectives on the subject matter that can be used pro and con a viewpoint, while the maxims can show the general strategies (relying on absent context, or the most natural reading, or the existing context, or the contextual and co-textual effects and consequences)[51].

According to the authors, these two dimensions of interpretation can be integrated within an argumentative model and, more important, the presumptions underlying arguments, canons, and maxims can be ordered on the basis of the purpose of the law. More precisely, the authors claim that «The purpose of the law can be considered as a meta-presumption resulting from the broader context of the legal system, within which all the other presumptions need to be ordered»[52]. Admitted and not granted that the purpose of the law is a decisive criterion – «a meta-presumption, governing the choice and the hierarchy of the arguments that can be advanced to support an interpretation»[53] – the problem is that that purpose can be reconstructed in several different ways. The authors think that the purpose of law is grounded on contextual and factual evidence and contextual and factual presumptions. However, as we have seen, legal interpreters can shape the context and co-text of a legal provision in many different ways, they can ignore factual evidence about the real legislators' intention, they can rely on different contextual presumptions. As a result, the purpose of the law does not seem an univocal principle that organizes the interpretive process; it is rather a result of this process. Therefore, the argumentative model provided by Macagno, Walton and Sartor seems an empty scheme that, in the very same case, can be filled differently, and does not lead us to predict the alleged «univocal meaning of the contested statement»[54].

On this regards, it is worth noting that all the examples provided by authors who support a Gricean model of legal interpretation refer to controversial cases: cases discussed before courts, often supreme courts, cases on whose solution the legal community is divided. Consider, e.g., the following example, provided by Sinclair[55]: *Caminetti v. United States.* The Mann Act applied to "any person who shall knowingly transport […] in interstate commerce […] any women or girl for the purpose of prostitution or debauchery, or for any other immoral purpose". In *Caminetti v. United States* the problem was to establish whether this provision applies also to

[51] Macagno, Walton and Sartor 2018: 99.

[52] Macagno, Walton and Sartor 2018: 105.

[53] Macagno, Walton and Sartor 2018: 103.

[54] Macagno, Walton and Sartor 2018: 110. Moreover, it is worth noting that conceiving the purpose of law as a meta-presumption is not consistent with the Gricean model. In this model the speaker's intention is not a presumption – a part from the trivial sense in which I presume that what the speaker says is what she intends to say – but it is the output of the understanding process: to understand an utterance is to understand the speaker's communicative intention.

[55] Sinclair 1985, 397 f.

those who transport a woman in order to consume extra-marital sex consensually. The US Supreme Court gave an affirmative answer, arguing that the provision refers to all immoral acts and not only those of a "commercial" nature. According to Sinclair, the Supreme Court applied his version of the second maxim of Quantity: if the legislator had wanted to exclude such cases, she would not have used such a broad expression as "any other immoral purpose". However, one can object that in this case the Court should have applied the criterion of the *ejusdem generis* (that, according to Miller, corresponds to Grice's second maxim of Quantity). Or one can appeal to the lawmakers' intention, since Congressman Mann's own committee report stated that the Act was intended to cover commercial vice only. Or, again, one can interpret this provision in the light of some interpretations of some constitutional rights.

I think that all these disputes[56] are evidences – even if not proofs – of the fact that in legal interpretation it lacks a general expectation that certain hermeneutic criteria will be spontaneously followed in a certain intuitive order. This is tantamount to say that legal interpretation is not a cooperative enterprise in the same sense as ordinary communication is. Ordinary communication, in Gricean framework, is cooperative because speakers and addresses rely on the very same criteria in order to transmit and grasp the speaker's communicative intentions. They rely on those criteria simply because there is a general mutual expectation that they will (§5). Instead in legal interpretation such mutual expectation lacks and therefore legal interpretation is not in this sense a cooperative enterprise. On this regard, the argument focused on the not cooperative nature of legal interpretation has been addressed in literature, but it must be clarified and rephrased, also because it has been sometimes misunderstood.

4.1. *On the not cooperative nature of legal interpretation*

According to a certain view legal interpretation diverges from Grice's model, because it is not a cooperative enterprise, but a conflicting[57] or strategic one[58].

So, e.g., Marmor claims that the conversations among the legislators themselves during the enactment process, as well as the conversations between legislatures and courts, are forms of strategic behaviour: «[S]trategic interaction is partly a cooperative and partly a non-cooperative form of interaction […] there is some degree of uncertainty about the norms that govern the particular conversation that enables the parties to the conversation to make strategic moves in it»[59]. Specifically, accord-

[56] For some other examples see Morra (2015); Morra (2016); Poggi (2016).
[57] Poggi 2011 and 2016.
[58] Marmor 2007, 2008 and 2011.
[59] Marmor 2011: 94.

ing to Marmor, the uncertainty about the relevant conversational maxims can be of two kinds: «[S]ometimes it may not be entirely determinate whether a certain maxim applies or not, and sometimes the uncertainty concerns the level of commitment or adherence to maxims that are taken to apply»[60]. Confining our attention to the relationship between judges and legislators, Marmor also endorses the thesis according to which the uncertainty about conversational maxims is functional for the strategic interests of both parties, because it allows «both parties to make various strategic moves in this game, so to speak»[61].

Similarly, in a previous essay I have argued that «[l]aw is an often-conflictual undertaking»[62]: «The parties in litigation are interested not in understanding what the legislator really wanted to say, but in winning the case [...] If in ordinary conversation the context can intervene and eliminate [...] uncertainties, in a trial even this will be the subject of controversy: as far as possible the parties will seek to twist the reconstruction of the context in their favour»[63].

Recently this view was criticized by Slocum, Bianchi, and Morra.

Following Lumsden[64], Slocum distinguishes between formal cooperation – i.e. the linguistic cooperation which involves acting according to conversational maxims – and substantial cooperation, which refers to the sharing of common goals amongst the communication partners and goes beyond the maximal exchange of information. Slocum argues that the CP «should be viewed as requiring only linguistic cooperation, as there is no common nonlinguistic goal in some cases where implicatures are applicable»[65]. I agree with this interpretation, and I admit that maybe I have not been clear on this point[66]. However, my thesis is precisely that in legal interpretation the linguistic cooperation does not occur. In other words, the thesis on the non-cooperative nature does not claim that legal interpretation is not cooperative because the parties pursue conflicting non-linguistic goals; it claims that legal interpretation is not cooperative because it does not rely on the mutual expectation that certain interpretative criteria will be always applied in a certain order.

In this regard, Bianchi and Morra argue that theses, such as those supported by Marmor and me, face two symmetrical difficulties: They unduly emphasise the collaborative aspect of cooperative conversations, on the one hand, and they unduly emphasise the conflictual aspect of strategic conversations, on the other hand.

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60 Marmor 2011: 94.

61 Marmor 2011: 101.

62 Poggi 2011: 34.

63 Poggi 2011: 35. As noticed by Slocum (2016), also Sarangi and Slembrouck 1992 address the applicability of the CP to institutional discourse.

64 Lumsden 2008: 1900. On this topic, see also Thomas (1998: 176-179); Ladegaard (2009: 649-666).

65 Slocum 2016: 37.

66 But see Poggi 2011: footnote 18.

According to Bianchi, different types of communicative exchange «call for different expectations an addressee is justified to entertain concerning the speaker's benevolence ("willingness") and competence ("ability")»[67]. Bianchi claims that the Sophisticated Understanding strategy (proposed by Sperber)[68] can account for legal interpretation. According to that strategy, the speaker S

> is not assumed to be benevolent or competent. She is merely assumed to intend to *seem* benevolent and competent. The addressee A should stop not at the first relevant enough interpretation that comes to mind, nor at the first interpretation that S might have thought would be relevant enough to A, but at the first interpretation that S might have thought would seem relevant enough to A[69].

Bianchi's examples concern cross examinations, and in general, testimonies and depositions: In these fields, her idea works pretty well; nevertheless, it seems difficult to apply it to the legal interpretation of authoritative texts, like statutes, since it is neither plausible nor relevant to conceive of the legislature as a speaker who intends to *seem* benevolent and competent. Legislature is supposed to direct behaviours and not to engage in a sophisticated strategy with the addresses, in order to manipulate them.

Morra argues that the CP also governs the textual exchange between the legislature and the courts, but in a manner that is somehow different than occurs in collaborative exchanges. Morra claims that what characterises the CP in legal interpretation is the high degree of indeterminacy: «[T]he statute, in adjudication, may suggest any implicature produced by the application of any maxim accepted in that context»[70], a context that Morra recognises «[t]he legislature cannot know a priori»[71]. Briefly, it seems that, according to Morra, judges are free to infer an implicatum or its opposite, as well as to infer nothing (with the only constraint being to conceive the text as bearing a communicative message and to provide arguments). However, it seems to me that this is tantamount to a claim that the CP does not govern legal interpretation. The parties of an ordinary conversation are not free to infer an implicatum or its opposite, as well as to infer nothing: not if they want to understand each other. If they want to understand each other they have to rely on the mutual expectation that conversational maxims hold in a certain intuitive order. If, instead, judges are free to follow or not one maxim or other, this means that in legal interpretation there is not such a general mutual expectation.

It is worth noting that my point is not that, in legal interpretation, maxims are

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67 Bianchi 2016: 192.
68 See Sperber 1994.
69 Bianchi 2016: 194.
70 Morra 2016: 226.
71 Morra 2016: 227.

sometimes not applied: In ordinary conversations, maxims are also sometimes violated or at least not followed[72]. The problem is not even whether the cases in which the maxims are not applied and those in which it is controversial whether to apply one or the other maxim, or none of them, are more numerous than those in which it is undisputed that a maxim is to be applied. The point is that, before a legal dispute is resolved, we are never sure that it will be resolved according to the CP: Even in the cases in which all the judges come to accept an interpretation in accordance with Gricean maxims (or some variants of Gricean maxims), this result could not be taken for granted in advance.

5. Conclusion. On the difference between conversational maxims and legal interpretative criteria

In our ordinary conversations, everyone follows the CP and the maxims, there is a general mutual expectation that everyone follows them, and when this expectation is not satisfied, incomprehension arises: This is a fact. Maxims are followed because they are followed: We normally follow Gricean maxims because there is a general expectation that everyone follows them, and there is a general expectation that everyone follows them because we normally follow Gricean maxims. This is how the world goes. As Levinson states, the cognitive sciences have demonstrated the asymmetry between the slowness of human discourse, the slowness of the emission of acoustic signals, and the apparently greater speed of human thought[73]. The CP and the maxims allow this asymmetry to be compensated for. However, this only proves that following the maxims is rational, but it is not a reason or a motive to follow the maxims. Obviously, our individual reason or motive to follow the CP is that everybody normally does: So, if we want to understand and to be understood, we must do what everyone normally does, i.e. follow the CP[74]. However, this holds individually, for each one of us, and it is not a reason that justifies our practice as a whole.

The general mutual expectation that characterizes our ordinary conversation seems to clash with the pervasive uncertainty that dominates in legal interpretation. If one can always doubt whether the CP is to be applied, and/or which maxim must

[72] Actually, if we also consider the maxims of politeness, which, in some contexts, prevail over the maxims formulated by Grice, violations are perhaps less common than one might think: see Lakoff 1973: 13-15.

[73] Levinson 2000: 28.

[74] I do not claim that the CP and the maxims are descriptions of certain regularities. According to my view, the CP and the maxims are hermeneutic technical rules, but they can play their role (i.e. to make people understand and be understood) because there is, as a matter of fact, a mutual general expectation that everyone follows them.

be applied, we can conclude that in legal interpretation there is not a general expectation that the CP will be respected, and therefore, that in that field, there is not, so to speak, a convention to employ conversational maxims (using "convention" in a broad sense)[75]. My thesis is that the frequent cases of the non-application of the CP are evidence of this general lack of expectation, the indeterminacy of the legal context and the (substantial) strategic character of the legislature are probably the causes of it, and the linguistically conflicting nature of legal practice is its result.

To further clarify this point, consider that, as we have seen, conversational maxims can be conceived of as customary hermeneutic technical rules[76] or as heuristics that guide our default understanding[77], or more generally, as norms that guide (and define) our reasonable interpretation[78]: In all these cases, I think, they are founded on the mutual expectation that they are normally followed. But if there is widespread uncertainty about their application, they are not hermeneutic technical rules (because to follow them does not guarantee the success of the communication), they are not customary (a customary rule followed occasionally is a *contradictio in adiecto*), they cannot guide a default interpretation (because each time, we cannot know if they will be applied or not), and they are not tools to determine which interpretation is reasonable (because contrary interpretations are also considered reasonable). The uncertainty about their application falsifies – or, better, makes impossible – the existence of a mutual expectation. In legal interpretation, I claim, there is such widespread uncertainty: We can never take for granted that some interpretative criteria will be applied, and in fact, very often, they are not. This means that, strictly speaking, in legal interpretation, we cannot even talk about a violation of the maxims (as Marmor does). In our ordinary conversation, where there is a general expectation that maxims are normally followed, and they are normally followed, we can speak of a violation; in legal interpretation, where there is not such expectation, we cannot speak of a violation, but we must simply say that the maxims do not hold.

My thesis does not amount to saying that, in legal interpretation, anything goes and there are no shared criteria to interpret statutes or to prefer one interpretation to another[79]: I simply claim that these criteria do not operate as conver-

[75] Actually, I think that the Gricean maxims are also conventional in the technical sense of "convention" developed by Lewis (1969): They are an arbitrary solution to a coordination problem characterised by an overwhelming conformity and a mutual expectation of conformity. However, I recognise that the arbitrariness of conventions seems at odds with the supposed universality of the Gricean maxims – i.e. with the thesis, supported by many scholars, according to which, *ceteris paribus*, every utterance of a language *L* would have exactly the same implicatures of every synonymous utterance of any other language *Ln*.

[76] See Poggi 2011: 2016.

[77] See Levinson 2000.

[78] Sbisà 2007 and 2017.

[79] In this regard, I want to recall Gizbert-Studnicki's thesis, according to which the rules of interpretation are not justified by some sort of semantic theory, nor do they reflect such a theory: the

sational maxims do, although they may have a similar content[80].

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canons of construction are rules that are justified by, and reflect, the fundamental values of political morality underlying legal orders (Gizbert-Studnicki 2015). The discussion of this thesis exceeds the scope of this essay, but it seems to me that if we agree, and we can provide arguments to support this thesis, then it can be assumed as a proof (not evidence) that the CP is not applied in legal interpretation (at least in Western countries): In fact, this thesis implies that the nature of legal interpretative criteria is very different from the Gricean maxims.

[80] Macagno, Walton and Sartor (2018) claim that both «legal canons and pragmatic maxims can be regarded in terms of defeasible reasons» (77). In other words, these criteria would operate in the same way in so far as they fit with (or can be accommodated within) a non-monotonic framework of argumentation. Here I'm not interested in discussing this thesis: my point is that legal interpretative criteria do not rely on a mutual general expectation. Therefore, they cannot be assimilated to conversational maxims.

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