

“The Constitution as a Box of Chocolates” (1995) is a serious academic paper by Jack Balkin. The title alludes to Forrest Gump’s mother’s metaphor for life: “Life is a box of chocolates, Forrest. You never know what you're gonna get”. This could just as well be said of legal texts in view of the widespread conviction that their interpretation is subjective and unpredictable. This research project aims to find a method of legal interpretation that is objective and predictable, i.e. which provides measurable criteria of what is a proper and what is an improper interpretation.

There has been a noticeable interest in “naturalizing jurisprudence” over recent years. This project follows this tendency. The rationale for this special interest in naturalism is the need to defend jurisprudence against the accusation of unconstrained discretion in formulating jurisprudential and judicial theses. The methodology of naturalism, with its rigorous scientific tools, may well serve as the foundation on which a similarly rigorous methodology of jurisprudence can be built and by which the Holy Grail of objectivity can be found.

Objectivity is a challenge for jurisprudence as a whole, but especially for one of its crucial areas: the theory of legal interpretation. The way judges interpret a legal text has always been considered the decisive factor in delimiting their discretion, and the methodology of legal interpretation has always had the objective of curtailing that discretion. The most outstanding legal philosophers of the twentieth century, including HLA Hart and R. Dworkin, devoted a great deal of effort to attempting to solve the problem of the discretionary powers of judges. The crucial methodological disputes in legal interpretation have focused on limiting the scope of freedom that lawyers have in interpreting legal texts, especially constitutional texts, and powerful theories have been proposed to achieve this end (e.g. originalism).

The effort to limit the discretionary powers of lawyers has been driven *inter alia* by twentieth-century developments in the philosophy of language, and in particular, the work of L. Wittgenstein (esp. *Philosophical Investigations*) and the works of postmodernist philosophers (esp. J. Derrida). The doctrine of “meaning as use” and the conviction that language is so flexible and self-referential as to have lost its ability to refer to the real, objective world, continue to constitute a challenge to those philosophers of law who maintain that stable and objective legal interpretation is possible. Moreover, the objectivity of legal interpretation is crucial not only to philosophers, but to laypeople as well. After all, nobody wants to be at the mercy of unfettered judicial discretion when his/her property, freedom, and sometimes even life, depend on judicial interpretation.

In order to determine the objective criteria of proper legal interpretation, the methods of contemporary naturalistic philosophy of language, especially the works of R. G. Millikan, will be applied to legal language. Millikan’s philosophy of language, based on C.S. Peirce’s philosophical pragmatism and the theory of evolution, equips lawyers with new tools to set a standard of what constitutes a good, objective interpretation. These tools include a naturalistic perception of tradition via the concept of convention as lineages of language use, and the biological concepts of proper function and survival value. The project will consequently deliver a set of measuring tools that enable a particular interpretative outcome in a court decision to be evaluated against objective criteria. This will make legal interpretation more predictable and judicial decisions less surprising.