ABSTRACT: What can a philosophical analysis of the concept of interpretation contribute to legal theory? In his recent book, *Interpretation and Legal Theory*, Andrei Marmor proposes a complex and ambitious analysis as groundwork for his positivist assault on "interpretive" theories of law and of language.

I argue (i) that the crucial element in Marmor's analysis of interpretation is his treatment of Ludwig Wittgenstein's remarks on following rules, and (ii) that a less ambitious analysis of interpretation than Marmor's can take better advantage of those insights about rules. I explore some implications of such an analysis for the role of interpretation in legal reasoning.

An interpretation is an answer to the question, "What do you make of this?" Interpretation is the process of coming up with an answer. Creativity and constraint complement each other in that process. If I ask, "What do you make of this?" I ask you to make something, but it must be something made of *this*. As a result, there are critical differences and critical similarities between interpretation and understanding, and between interpretation and invention.

Perhaps a general analysis of the concept of interpretation can say no more. The concept is abstract and malleable, and the extent of the creativity of interpretation depends on what the situation allows. That is a matter of the nature of the object, the questions that an interpretation must answer, the interpreter's purposes, the expectations of people to whom an interpretation is offered, and so on. If this is all we can say about the concept of interpretation, then some very general questions about how (for example) judges ought to interpret statutes and legal precedents are to be answered not by in vitro analysis of the concept, but by means that will have to do partly with the nature of a legal system, and partly with the individual characteristics of an indefinite variety of legal problems.
I will call this account of the concept of interpretation the simple account, and propose it as an alternative to the more ambitious analysis that Andrei Marmor develops in his recent book Interpretation and Legal Theory.¹ This article aims to review Marmor's central claims about the nature of interpretation, and to argue that his conclusions are better supported by the simple account. Discussion of Marmor's theses will be followed by exploratory remarks on issues that those theses raise: the role of linguistic indeterminacies in understanding and interpretation, the distinction between interpretation and invention, the role of intentions in interpretation, and the range of possible objects of interpretation. A conclusion will approach the question of the place of interpretation in legal reasoning.

I. MARMOR'S THESSES

Marmor aims to deflate overblown notions of interpretation in legal theory and in the philosophy of language. His book challenges a formidable array of theories that, in various ways, treat interpretation as a prerequisite for understanding law or language. Against those theories, Marmor defends "conventionalism", an approach to the philosophy of language that supports legal positivism. Marmor's conventionalism is based on Ludwig Wittgenstein's discussion of meaning and understanding, and in particular on his remarks about rules. Marmor captures the implications of this position for jurisprudence in a claim that "there is nothing more to law than that which is perspicuous in the rules and practices which people actually follow" (9).

Marmor's prime target is Ronald Dworkin's theory of interpretation: in a pointed oxymoron, Marmor proposes that there are good reasons for "revising the theory altogether" (84). The introduction attacks Dworkin's argument that positivists suffer from a "semantic sting"; chapter 3 counters Dworkin's view that inter-

¹ Oxford: Clarendon Press, 1992, to which I will refer by page numbers in brackets.