Interpretive Justice in Organizations

A Preliminary Discussion of Problems and Open Questions

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Abstract

Organizations govern by rules, and rules do not apply themselves. Between a rule and a case stands an act of interpretation, performed by an organ of the organization, which fixes what the rule shall have meant for that case. This paper takes that act as its object. It argues that the interpretive act is a distinct site at which injustice can occur, irreducible to the injustice of what an organization distributes or to the injustice of the procedures by which it decides. Four questions organize the discussion: who holds standing to interpret, by what modes interpretation proceeds, which rules and which predicates carry the interpretive load, and what protects a party against whom an interpretation is exercised. The paper surveys what jurisprudence, legislative drafting, standard-setting, administrative review, and organizational governance have made of these questions, across several legal traditions, and finds a boundary common to every device assembled in answer to the fourth: each presupposes that the interpreting body holds some stake in recognition, whether legal, market, reputational, or professional, and each approaches ineffectiveness as that stake approaches zero. Where authority over interpretation and dependence upon recognition are held by the same party, no available instrument reaches the interpretive act. Against this boundary the paper sets a generative relational reading, on which an interpretation is assessed by what it does to the capacity of the relation between interpreter and interpreted party to generate a further interpretation. Injustice, on that reading, is the extinction of that capacity, and the sanction upon it is delegated to the dynamics of the structure itself, under guardrails the paper states explicitly and at length. The account supplies no enforcement and no remedy to a present party, and the paper closes on the questions this leaves open.

Keywords: interpretation; organizational rules; justice; discretion; accountability; asymmetry; relational generation; governance.

A note on the standing of this paper. This is a preliminary discussion. It identifies a structure, surveys what existing theory and existing practice have made of it, marks where each runs out, and proposes a direction. It does not complete a theory, and the questions set down at the close are held to be the more valuable half of what is offered. The survey is wide because the structure recurs at scales usually studied apart, and width is a liability the paper attempts to discipline by the device stated in §1: every section discharges one of four named questions, and material earns its place by discharging one. Where the survey is thin, where a jurisdiction has been read wrongly, or where an instrument answers the difficulty the paper claims it leaves open, correction is welcome at `huangwanhong@serendip.ngo`.

1 The Problem of Organizational Rule-Interpretation

An organization that governs by rules must, at the moment of each decision, determine what its rules say about the case before it. The rule is general and the case is particular, and nothing in the rule specifies its own application. Someone must fix whether this case falls under that rule. That fixing is an act, performed by an organ of the organization, and it is the act with which this paper is concerned.

The act is easy to overlook because it is usually described in a vocabulary that conceals it. An organization is said to *apply* its rules, and application suggests a technical operation in which the content of the rule is antecedently settled and the only work remaining is to see whether the facts match. On that description the interpretive act disappears into the rule it applies, and the questions that can be raised concern the rule and the facts alone: whether the rule is a good one, whether the facts were found correctly, whether the procedure by which they were found was fair. Each of these is a real question and each has a literature. None of them reaches the act by which the rule's content was fixed for this case.

Consider the structure at its plainest. A professional body admits members on the criterion that an applicant hold experience relevant to the field in which admission is sought. An applicant holds substantial experience acquired in an adjacent field. Whether that experience is relevant to this one is not settled by the rule, since the rule contains the word whose extension is at issue. It is settled by an organ of the body, in the course of deciding. The applicant may contest the finding of fact, and there is no fact in dispute. The applicant may contest the fairness of the procedure, and the procedure may have been impeccable. What the applicant would contest is the interpretation, and it is precisely here that the available channels thin out.

They thin out for reasons that are structural. Organizational rules are not law. A university's admission regulation, a professional body's code, a firm's promotion criteria, a standard-setter's conformity requirement: these bind by the organization's own authority, and their interpretation is committed in the first instance to the organization itself. Where the organization is a public body, an external review may lie, though the review will ordinarily reach the procedure and the legality of the exercise and will decline the substantive evaluative judgment as belonging to the body's own competence. Where the organization is private, even that external review may be absent. And no legal system compels an organization to establish an internal mechanism by which its interpretations may be contested. The law can require that reasons be given; it can rarely require that the reasons be right.

Four questions arise, and they organize everything that follows.

(i) **Authority.** Who holds standing to interpret an organization's rules, and how is that standing acquired?

(ii) **Mode.** By what modes does interpretation proceed, and what distinguishes a bounded

interpretation from an arbitrary one?

(iii) **Object.** Which rules, and which of their terms, carry the interpretive load, and why is that load unevenly distributed?

(iv) **Protection.** When an interpretation works an injustice upon a party, what protects that party?

The first three have received sustained treatment, chiefly in jurisprudence, and the treatment transfers to organizations with qualifications this paper enters as it goes. The fourth is where the difficulty concentrates, and it is the question toward which the survey is directed.

The account offered in response may be stated as a single claim.

> **Central claim.** *The interpretation of a rule is a distinct site at which injustice can occur, separable from the justice of what an organization distributes and from the justice of the procedures by which it decides. The devices developed to protect a party against interpretive injustice, across jurisprudence, legislation, standard-setting, administrative review, and organizational governance alike, share a common presupposition: that the interpreting body holds a stake in recognition by some party outside itself. Each device operates upon that stake, and each loses its purchase as the stake approaches zero. Where authority over interpretation and independence from recognition coincide in one party, the available instruments do not reach. A generative relational reading proposes that an interpretation be assessed by its effect upon the capacity of the relation between the parties to generate a further interpretation, and that the injustice consists in the extinction of that capacity. On this reading the sanction is not administered by an external authority and appears in the dynamics of the structure itself, which is a description of a mechanism and carries no assurance that the mechanism arrives in time, or at all, or in a direction anyone would welcome.*

The claim is developed in five movements. The first sets out the structure of the interpretive act and argues that it is constitutive of a rule's content, which is what makes it a site of justice at all. The second reviews what jurisprudence has established about indeterminacy, about the doctrines of interpretation, and about the justice of interpretation, and positions the concept against adjacent concepts of injustice with which it is easily confused. The third reviews the theoretical strategies by which interpretation has been proposed to be constrained, and the difficulties each encounters. The fourth reviews institutional practice at four scales and across several legal traditions, and extracts the failure modes that recur across all of them, closing on the asymmetry boundary. The fifth offers the generative relational reading, states what it does not deliver, and sets down the open questions.

A word on the discipline of the survey. The material assembled here is drawn from fields ordinarily studied apart, and a survey of this width invites the reproach that it is a catalogue. The device by which the paper attempts to earn the width is stated now and enforced throughout: each section names, at its opening, which of the four questions it discharges, and material is admitted to a section on the ground that it bears on that question. Sections 3 and those following on the modes and objects of interpretation discharge authority, mode, and object. Sections on jurisprudence and on institutional practice discharge all four, with protection dominant. The generative relational sections discharge protection alone, since it is the question the earlier answers leave open. Material that bears on none is left out, however interesting, and the omissions are recorded where they are likely to be missed.

Two disclaimers close this section. The paper takes no position on whether any particular organization has interpreted any particular rule wrongly, and the illustrative cases carry no such charge. And the concept advanced here has neighbours, in hermeneutical injustice, in procedural injustice, and in theories of domination, from which it must be distinguished with care; a section is given to that task, because a concept that cannot be told from its neighbours has not been introduced.

2 Scope and Method

This section fixes the objects of the discussion, states the scales across which they are traced, and enters the limits of the comparative method employed.

2.1 Organization, Rule, Interpretive Act

By *organization* is meant any standing body that governs conduct by general rules of its own and decides particular cases under them: a legislature, a regulatory agency, a standard-setting body, a court, a university, a professional association, a firm, an international institution, a non-governmental association. The definition is broad by design, since the structure at issue is generated by the conjunction of general rules with particular decisions, and that conjunction is indifferent to the legal form of the body in which it occurs. Where the legal form matters, and it often does, it matters by determining which external devices are available; that is a finding of the survey and not a premise of it.

By *rule* is meant any general standard the organization holds itself out as deciding by, whether it is styled a statute, a regulation, a criterion, a code, a policy, a standard, or a guideline. Rules that are published and rules that are internal are both included, with the difference between them treated as a variable affecting contestability.

By *interpretive act* is meant the determination, in the course of deciding a case, of what a rule requires with respect to that case. The act is present whenever a rule's terms admit of more than one extension in the circumstances, which is to say almost always, and it is most visible

where the term is evaluative. The act is distinguished from three neighbours with which it is commonly merged: from *fact-finding*, which determines what occurred; from *rule-making*, which settles the general standard in advance of any case; and from *discretion* in the narrow sense, in which a rule expressly confers a choice among permitted outcomes. Interpretation shares with rule-making that it fixes content, and shares with discretion that it is an exercise of judgment; it differs from the first in occurring at the moment of decision and under the guise of application, and from the second in that the organ performing it ordinarily represents itself as bound.

2.2 The Scales of Comparison

The survey traces the structure across four scales, at which the same conjunction of general rule and particular decision recurs under different institutional conditions.

Legislation is the scale at which a rule's interpretation is anticipated by the drafter, through definition clauses, purpose clauses, interpretation statutes, and the regulation of delegated power. *Standard-setting* is the scale at which private and transnational bodies write rules that bind through conformity assessment and market access, and at which the interpretive question is compounded by the question of who wrote the standard. *State administration* is the scale at which the interpretive act of an official is subject to a developed apparatus of reason-giving and review. *Organizational governance* is the scale at which internal mechanisms alone are available, and it is the scale at which the difficulty of the fourth question is sharpest. A fifth setting, that of international and transnational bodies deciding without a sovereign above them, is treated where it illuminates the fourth question, since it is the clearest case of interpretive authority disciplined by recognition alone.

The claim that these four are instances of one structure is a claim of the paper and is defended by exhibiting the same failure modes at each. A reader who holds the scales to be disanalogous will find the argument at its weakest in the transition from public to private, where the availability of external review differs in kind and not only in degree, and that transition is marked where it occurs.

2.3 Comparative Method and Its Limits

Several legal traditions are drawn upon: the common law systems of the United States and the United Kingdom, the continental systems of Germany, France, and Switzerland, the East Asian receptions of continental administrative doctrine in Japan and Korea, the supranational order of the European Union, and the transnational order of private standard-setting. Islamic legal theory is entered for its architecture of interpretive authority, which is the most fully developed answer to the first question available in any tradition.

Three limits attach. The comparison is doctrinal and institutional, and it does not rest on

empirical study of how the devices surveyed perform in operation; where empirical findings exist they are cited, and their scarcity is itself a result. The selection of jurisdictions is governed by the availability of scholarship in the languages the author reads, which biases toward English, Japanese, and translated continental sources. And instruments of the kind surveyed here are revised on cycles, and doctrines are overruled; the state of the law and of the standards is stated as of the date of writing, and readers should verify currency, a caution that the recent displacement of a long-settled deference doctrine in the United States makes more than formal.

2.4 Exclusions from the Undertaking

The paper does not offer a decision procedure by which a given interpretation may be classified as just or unjust. It does not offer a model of the dynamics it invokes in its closing sections, and the reasons for that abstention are stated there. It does not adjudicate among the doctrines of legal interpretation surveyed, and takes them as candidate answers whose difficulties are the object of interest. And it does not propose institutional reform, since the finding it arrives at is that the available reforms operate upon a stake that is absent in the cases of greatest concern; proposing more of them would evade the finding.

3 The Interpretive Moment

This section discharges the first part of the second question, by establishing what the interpretive act is, and prepares the fourth, by establishing why it is a site at which justice is at stake. The argument has three steps: that interpretation is constitutive of a rule's content for the case, that the position from which it is performed is structurally asymmetric, and that the authority to interpret extends to the rules governing challenge to its own exercise.

3.1 The Minimal Structure

Let an organization hold a rule R, and let a case c arise. An organ A of the organization determines whether R covers c. The determination is expressible as a proposition, that R covers c or that it does not, and the organization proceeds upon it. Call this the *interpretive moment*.

Three features of the moment are worth marking before anything is claimed about it. It is *occasioned*: it occurs because a case has arisen, and its occasion is supplied by a party who ordinarily has no control over when interpretation will be required. It is *particular*: it settles R with respect to c, and whether it settles R with respect to any further case depends on whether the organization treats its own determinations as binding upon itself, which is a variable and not a constant. And it is *represented as bound*: the organ does not ordinarily announce that it

has chosen a meaning, and announces that it has found one. This last feature is the source of the moment's invisibility and will bear weight later.

3.2 Interpretation as Constitutive

The claim that carries this paper is that the interpretive moment does not report a content the rule already had. It constitutes that content for the case.

The claim can be argued from the side of language and from the side of relation, and both routes are needed. From the side of language, the argument is familiar and will be surveyed at length in the section on indeterminacy: a general term does not carry its own extension to the borderline case, and no further rule can supply the extension without itself requiring interpretation, on pain of regress. What is added here is the second route.

From the side of relation, the argument runs as follows. A concept holds no boundary that is self-sufficient. What a term covers is fixed by its position in a network of other terms, of prior usages, of purposes the network is taken to serve, and of practices in which the term has been deployed. The word "relevant" has no extension considered alone; it acquires one only against a field of disciplines, a purpose the requirement of relevance serves, a history of cases in which relevance has been found or denied, and a practice of research within which relevance is a live notion. This is a statement about concepts generally, and its consequence for rules is direct. To determine that R covers c is to locate c within the network against which R's terms take their extension, and locating is an operation performed by whoever performs it, from the position they occupy in that same network.

Two things follow, and the second is as important as the first.

The first is that interpretation is an exercise of power. To fix the extension of a term for a case is to determine the normative position of the party whose case it is, and to do so by an act that the rule did not perform. The organ is doing something to the party, in the ordinary sense in which an exercise of authority does something, and the doing is not licensed by the rule alone, since the rule did not reach the case without the act.

The second is that this exercise of power is *bounded*, and the boundedness is a consequence of the same relational thesis that established the power. If the extension of a term were self-sufficient, interpretation would be mere reading and would carry no power. If the extension were unconstrained by anything, interpretation would be arbitrary and the whole apparatus of rules would be theatre. The relational thesis yields neither. Because a term takes its extension from a network, any proposed extension must be compatible with the network, and a proposal that is not can be shown to be so. A determination that a doctorate in music is relevant to a chair in surgery is not merely unwelcome; it is unavailable, because it cannot be held together with the purposes, usages, and practices from which the term draws its content. The space of admissible interpretations is therefore neither a point nor the whole, and this is the space within which the second question, on the modes of interpretation, will be posed.

It matters that this second consequence be stated at the outset, because a relational account of meaning is commonly heard as licensing arbitrariness, and if it did so it would destroy the concept this paper is attempting to introduce. A theory on which any interpretation is as good as any other cannot say that an interpretation was unjust, and it cannot say so of its own claims either. The account advanced here holds that relational constitution is the source of constraint upon interpretation and is what makes an interpretation criticizable at all.

3.3 The Asymmetry of the Interpretive Position

The interpretive moment is occupied asymmetrically, and the asymmetry has four components that should be distinguished, since remedies exist for some and not for others.

The first is *positional*. One party determines and the other receives the determination. This asymmetry is constitutive of rule-governed decision and is not in itself objectionable; an organization that could not determine the application of its own rules could not decide at all.

The second is *informational*. The organ ordinarily knows the history of prior determinations, the purposes the rule is taken to serve, and the range of readings under consideration. The party ordinarily knows the text. Where prior determinations are unpublished, the party cannot know whether the reading applied to them is the reading applied to others.

The third is *representational*. The determination is announced as a finding. A party who wishes to contest it must therefore contest what is presented as a discovery about the rule, using materials the organization controls, and must do so without a vocabulary in which the objection is naturally expressed. Ordinary language supplies ready terms for objecting to a rule and for objecting to a procedure, and supplies thin terms for objecting to an interpretation.

The fourth is *recursive*, and it is the component this paper regards as decisive. The rules that govern whether and how an interpretation may be challenged are themselves rules of the organization, and their interpretation belongs, in the first instance, to the same organization. Whether a given complaint is within the scope of an internal appeal, whether it raises a matter of substance excluded from review, whether it was brought in time, whether the complainant has standing: each is an interpretive question, and each is answered by an organ whose answer determines whether the original interpretation will be examined at all. The authority to interpret thus extends to the conditions of its own review. Where the extension is complete, the interpretive power is closed upon itself, and a party contesting an interpretation is in the position of appealing to the interpretation of the rules of appeal.

3.4 Interpretive Injustice as a Distinct Site

With the structure of the moment set out, the reason it deserves a name of its own can be stated. The argument proceeds by elimination against the two categories into which the phenomenon is otherwise absorbed.

It is not distributive. What an organization distributes may be distributed justly and the interpretation by which it did so may be objectionable; and an interpretation may be unobjectionable while the distribution it produces is indefensible. The two vary independently, which is the ordinary test for whether one concept has been reduced to another.

It is not procedural. A procedure may be complete, timely, impartial in composition, and scrupulous in the hearing it affords, and the interpretation reached at the end of it may still be the object of complaint. Procedural guarantees regulate the path to the determination and are, with few exceptions, silent about the determination. This is not an incidental gap in existing procedural doctrine; it follows from what procedure is, and the survey will show it recurring in every jurisdiction examined.

There remains the possibility that interpretive injustice is a species of domination, or of the injustice of unaccountable power in general. That relation is closer, and it is taken up where the adjacent concepts are treated. The provisional statement is that domination names the standing liability to arbitrary interference and does not by itself distinguish interference through interpretation from interference by other means, whereas the interest of the present concept lies precisely in the mechanism, since interpretation is the mode of interference that presents itself as the absence of interference.

With the structure of the moment established, the question that governs the remainder of the paper can be put in its sharpest form. Given that a rule's content is constituted at the moment of decision, by an organ occupying an asymmetric position, with authority extending to the conditions of its own review, what protects the party against whom the constitution is performed? The sections that follow assemble what has been offered in answer, and the answer they converge upon is narrower than the apparatus assembled would suggest.

A note on the state of the draft. The argumentative spine and the theoretical survey are drafted and the survey of institutional practice is in progress, so some sections appear here ahead of others that will precede them in the final order, and the numbering anticipates that order throughout. Sections 15 through 22, on interpretive control in legislation, in standard-setting, in administrative review, in organizational governance, and in international bodies, together with the evidentiary devices against pretextual interpretation and the recurrent failure modes, are pending. Section 23 is drafted ahead of them because it states the result those sections are directed toward, and drafting it first fixes the destination against which the survey is written.

4 The Authority of Interpretation

This section discharges the first question. It sets out the sources from which standing to interpret is drawn, states the relation between the account given here and the position taken in the companion work on value conversion, distinguishes formal from effective authority, and

marks the neglected question of who holds standing to contest.

4.1 Sources of Standing

Standing to interpret an organization's rules is drawn from three sources, and most actual arrangements combine them.

Conferral is the ordinary source. A constitutive document, a statute, a delegation, or a resolution names an organ and commits to it the determination of matters under the rules. The organ interprets because it was appointed to interpret, and its determinations bind because of the appointment.

Practice is the second. An organ that has determined matters of a kind, whose determinations have been acted upon and acquiesced in, acquires standing through the acting and the acquiescing. Much interpretive authority in organizations rests here, since the arrangements by which a body's rules are administered ordinarily develop faster than the documents that describe them.

Performance is the third and is the source the companion work on value conversion treats as primary. The party who performs an act of fixing acquires, by performing it, the vocabulary in which the matter is subsequently discussed. Whoever writes an equivalence supplies the terms of the exchange; whoever fixes an extension supplies the terms in which the rule is thereafter understood, since the determination enters the network as a usage and the next case is decided against a field that now contains it.

4.2 Relation to the Position on Conversion

The companion paper holds that the question of who owns the right of interpretation is the wrong question, on the ground that legislative standing is generated by the act of crossing categories and is not held in advance (Huang, in preparation). The present subject requires a qualification of that position, and the qualification is worth stating because it locates something the conversion case does not display.

In an organization the ordinary case supplies a designated organ, so standing is antecedent in a way that the conversion case does not exhibit. An admitting body's assessment panel holds its authority before any application arrives, and holds it whether or not it exercises it well. To that extent the question of who owns the interpretive right has an answer, and the answer is given by the conferral.

The qualification is that conferral fixes the holder and does not fix the reach. What matters may be determined by the organ, how far its determinations extend, whether a question belongs to it or to another body, and what it may take into account, are settled by rules, and those rules require interpretation in the same way as the rules whose application is at issue. At the centre of a conferral the answer is plain and no interpretive act is needed to see it. At

the edge the answer is supplied by an interpretive act, and the organ performing that act is ordinarily the organ whose reach is in question.

Authority therefore has an open texture of its own, in the sense given by Hart (1994) for rules generally. The conversion paper's thesis holds at the edge, where standing is generated by the act of claiming it, and the conferral thesis holds at the core. The two positions are compatible once the distinction between core and edge is drawn, and the fact that they must be reconciled at all is a consequence of the recursion entered in §3, since it is the same feature under a different description: a power that determines the scope of the rules governing its own exercise is a power whose reach is partly its own to fix.

4.3 Formal and Effective Authority

An organization's rules name the organ that decides, and the interpretive act is ordinarily distributed across more positions than the named one.

Consider the sequence by which a case reaches a decision. An officer receives it and determines whether it is complete, which requires a reading of the rule specifying completeness. A second officer screens it against threshold criteria, and a case that fails the screen never reaches the body that formally decides. A drafter of internal guidance has previously fixed how a term is to be understood, and the guidance shapes what the screener does. The formally deciding body receives a case already characterized, and its determination is made upon materials that earlier interpretive acts have assembled.

The distinction that follows is between *formal* interpretive authority, held by the organ the rules name, and *effective* interpretive authority, held by whoever fixes the readings on which the outcome actually turns. The two coincide in some arrangements and diverge in many. Where they diverge, three consequences follow that will matter in the sections on practice.

The first is that devices addressed to the formal locus do not reach the effective one. A duty to give reasons binding on a deciding committee says nothing about the screening officer, and a right of appeal against the committee's decision is of no use to a party whose case was disposed of before the committee saw it.

The second is that the effective locus is ordinarily the less visible. Guidance is internal, screening is unrecorded, and characterization of a case is not experienced by anyone as an interpretive act. The party is informed of the outcome and of the organ that reached it.

The third is that the dispersal makes responsibility difficult to locate even inside the organization. No officer in the sequence performed the whole of the interpretation, each performed a portion that was reasonable in itself, and the determination that resulted is attributable to the arrangement more readily than to any of them.

4.4 Standing to Contest

A question that ordinarily receives less attention than the authority to interpret is the authority to raise an interpretive question. It is treated here because §25 will turn upon it.

Standing to contest is ordinarily narrower than the class of parties affected. A party to the case may complain. A party in a like position whose case has not yet arisen may not. A member of the class the rule governs, who can foresee that the reading will bear upon them, ordinarily may not. A party affected by the reading through its operation on somebody else may not. And a party who has departed, whose relation with the organization ended with the determination, ordinarily may not, though the reading survives them and governs those who follow.

The narrowness has a structural consequence. Where the class of contestants is confined to parties presently before the organization, and where those parties depart upon determination, a reading may govern indefinitely with nobody positioned to raise it. This is the condition that §25 will identify as structural extinction, and it is produced by the ordinary drafting of standing rules and requires no act of foreclosure.

4.5 Findings and Residue

This section establishes that standing is antecedent at the core of a conferral and generated at its edge, that effective authority disperses across positions the rules do not name, and that standing to contest is narrower than the class affected. It leaves open whether interpretive standing may be delegated outside the organization without relocating the recursion, and what grounds an exercise of interpretive authority as legitimate. Both are entered in §28.

5 The Modes of Interpretation

This section discharges the second question. It sets out the modes by which interpretation proceeds, identifies what each requires in order to be available, states the difficulty that arises from their plurality, and proposes the distinction between a bounded reading and an arbitrary one that §3 promised.

5.1 The Modes and Their Materials

Five modes recur across legal and organizational practice, and they are presented here in a way that departs slightly from the usual taxonomies, by identifying for each the region of the network from which it draws.

Textual interpretation draws on the settled usage of the terms, taking the extension a competent speaker would give them. *Purposive* interpretation draws on the ends the rule is taken to serve, asking which reading advances them. *Systemic* interpretation draws on the remaining

corpus of the organization's rules, asking which reading coheres with what else is provided. *Precedential* interpretation draws on the record of prior determinations, asking how the term has been taken before. *Analogical* interpretation draws on structural similarity between the case at hand and cases already decided, asking whether the features that governed there obtain here.

Presented this way, the modes stop being a list of competing schools and become a set of routes to the same object. Section 3 held that a term's extension is fixed within a network of usages, purposes, coherence relations, and prior applications. Each mode mobilizes one region of that network. Their plurality follows from the composition of the network and is not a failure of theoretical tidiness.

5.2 Conditions of Availability

A mode is available only where the materials it draws upon exist and are accessible to whoever would use it.

Purposive interpretation requires a discoverable purpose. Where a rule was adopted without recorded deliberation, where its purpose is contested, or where it has outlived the circumstances that produced it, the mode supplies nothing, or supplies whatever the interpreter takes the purpose to have been, which is the difficulty the section on theoretical strategies will press.

Precedential interpretation requires a record. Where determinations are unpublished, unindexed, or not preserved, no party can invoke them, and the organ itself may be unable to consult them. Individualized decisions of the kind organizations make in large numbers are commonly in this condition.

Systemic interpretation requires a corpus of sufficient extent and consistency to yield coherence relations. A body governed by a handful of provisions adopted at different times for different reasons supplies little.

Analogical interpretation requires both a record and an articulated account of which features of prior cases were doing the work.

The consequence for organizations is considerable and is stated here because the survey of practice will return to it. Legal systems have invested heavily in the materials these modes require: reports, records, drafting histories, published reasons, and codified corpora. Organizations ordinarily have none of this. What remains available to an organization lacking record, recorded purpose, and corpus is textual interpretation and unstated judgment, which are the two modes that draw on the least and are the two hardest for an outside party to check.

5.3 The Difficulty of Plurality

Where several modes are available, a further question arises that the modes cannot answer among themselves: which mode governs where they diverge.

Llewellyn (1950) supplies the demonstration in its most economical form for the canons of construction, which come in opposing pairs. The demonstration generalizes to modes. A reading supported by settled usage may be opposed by one supported by purpose; a reading supported by prior determinations may be opposed by one supported by coherence with rules adopted since. An organ seeking a given outcome will ordinarily find a mode that licenses it, and will be able to state, in good faith, the mode it used.

The natural response is a second-order rule ordering the modes, and the response encounters the regress of §8: a rule ordering the modes is a rule, its application to a case requires interpretation, and the modes are what interpretation proceeds by. The regress is not vicious in practice, since practices do settle orderings and organs do follow them, and it is unarrestable in theory, which is the same result reached in §8 by a different route.

5.4 The Bounded and the Arbitrary

Section 3 claimed that the relational constitution of meaning constrains interpretation and does not license arbitrariness, and deferred the distinction to this section. The distinction proposed is deliberately weak, and its weakness is the point.

> **Boundedness.** *A reading is bounded when it can be exhibited as drawn from an identified region of the network that fixes the term's extension, in a form that a party competent in the practice can follow and test. A reading is arbitrary when no such exhibition is available, whether because none was offered, because what was offered does not support the reading, or because the reading draws on nothing the network contains.*

Three features of this proposal should be marked.

It does not select among admissible readings. Two readings may each be exhibited from different regions of the network, and the criterion pronounces both bounded and says nothing about which is better. This is Kelsen's frame restated in operational terms, and the limitation is inherited knowingly.

It is a criterion of exhibition and therefore depends upon reasons being given. A reading is bounded when the exhibition is available, and the exhibition is available when the organ states what it drew upon and how. Where reasons are absent, or are given in a form that reports the conclusion without the route, the distinction cannot be drawn from outside, and a bounded reading is externally indistinguishable from an arbitrary one. The duty to give reasons, surveyed in §23 among the devices, is doing analytic work here and is not merely

a procedural courtesy: it is the condition under which the boundedness of an interpretation becomes assessable at all.

It leaves the prospective question open. Whether a reading can be exhibited is answerable once the exhibition is attempted, and whether a proposed reading lies outside the network is answerable in advance only by conjecture. This is entered as Q3 in §28.

6 The Objects of Interpretation

This section discharges the third question. It classifies the terms of rules by the interpretive load they carry, identifies a class of terms whose determinations are unreviewable from the position of any single party, and explains why interpretive load concentrates at the points where organizations allocate scarce goods.

6.1 A Classification by Load

Terms may be arranged by how much interpretive work their application requires.

Determinate terms specify dates, quantities, named entities, and enumerated categories. Their application is mechanical in the ordinary case and their interpretive load is near zero. Rules composed of such terms can be administered without judgment, which is why organizations move terms into this class when they wish to remove discretion.

Classificatory terms specify kinds: employee, resident, document, dependant, publication. Their core is settled and their borderline is genuinely open, which is the condition Hart (1994) described. Their load is moderate and is concentrated in a minority of cases.

Standard terms specify a level to be met: reasonable, adequate, sufficient, satisfactory, material, relevant. Their application requires an evaluation on every occasion of use, and their load is high in every case and not merely at a borderline. Endicott (2000) treats the vagueness of such terms as ineliminable and as serving purposes that precision would defeat, which is why they are not simply drafting failures to be corrected.

Comparative terms specify a relation to other cases: best, strongest, most suitable, most deserving, of highest merit. Their load is the highest and their structure differs from the others in a way the next subsection takes up.

6.2 Comparative Terms

A comparative term differs from a standard term in what its application requires. To determine that a case meets a standard requires the case and the standard. To determine that a case is the strongest requires the case, the standard, and every other case in the comparison class.

Three consequences follow, and together they explain a good deal of what the later sections find.

The first is that a determination under a comparative term cannot be checked by a party who has access to their own case alone. The materials that would show the determination correct or incorrect are the other cases, and those are ordinarily confidential, are ordinarily numerous, and are ordinarily unavailable to anyone outside the deciding body. A party told that others were stronger is in possession of a proposition they have no means of examining.

The second is that a comparative determination is unreviewable in a stronger sense than a standard determination. A reviewing forum can assess whether a body applied an intelligible standard to a case. Assessing whether a body correctly ranked a case against a field would require the forum to redo the exercise, which every forum surveyed in the sections on practice declines to do, and declines for reasons that are sound.

The third follows from the first two. A comparative ground, once available, absorbs any challenge to a determination made on other grounds. If a determination under a standard term is contested, and a comparative ground is available on the same facts, the body may rest upon the comparative ground and the challenge ends, since the comparative ground is not examinable. This is the analytic basis of the substitutability of reasons identified in §23 as one of the conditions under which the protective devices lose their purchase, and it explains why that condition is structural and not a matter of bad faith. A body that shifts from a relevance ground to a merit ground has moved from a proposition a party might contest to one that no party can, and it need not have intended anything by the move.

6.3 The Concentration of Load

Interpretive load is unevenly distributed across an organization's rules, and the distribution is not random.

Rules governing internal procedure, entitlements attaching to status, and matters where predictability is valued by the organization itself tend to be composed of determinate and classificatory terms. Rules governing the allocation of goods that are scarce tend to be composed of standard and comparative terms, since the organization requires the latitude that such terms preserve, and since specifying in advance what will distinguish the successful case is ordinarily impossible.

The consequence is that interpretive load is highest exactly where the stakes for the affected party are highest, where the number of affected parties is greatest, and where those parties are least likely to hold anything the organization requires. Admission, appointment, promotion, funding, certification, and the award of discretionary benefits share this profile. The conditions identified in §23 under which the protective devices fail are therefore concentrated in the same region as the interpretive acts that most need protecting, and the coincidence is produced by the structure of the allocation problem.

6.4 Published Criteria

One partial remedy belongs in this section, since the sections on practice will meet it repeatedly in institutional form.

An organization may publish criteria specifying how its standard and comparative terms are to be understood. Publication converts what would have been an interpretive act into a rule of lower generality, and it supplies materials for the precedential and systemic modes that §5 found ordinarily absent. It renders determinations checkable against something, and it exposes departures.

Two limits attend it. The criteria are themselves composed of terms, and their application requires interpretation in turn, so publication relocates the interpretive question and does not dissolve it. And publication is costly to the organization in precisely the respect for which the latitude was valuable, so bodies that allocate scarce goods have a standing reason to state their criteria at a level of generality that preserves what the standard and comparative terms were preserving. The devices surveyed in the sections on practice include several that require publication, and the finding there will be that the requirement is satisfiable without the latitude being surrendered.

6.5 Findings and Residue

This section establishes a classification by interpretive load, isolates comparative terms as a class whose determinations resist examination by any single party, and locates the concentration of load in the allocation of scarce goods. It leaves open whether evaluative predicates differ in kind from other open-textured terms or in the proportion of cases falling in the penumbra, which is entered as Q4 in §28.

7 The Epistemology of Concept Application

Two claims made earlier in this paper rest on assumptions about how a general term acquires its extension. Section 3 held that an interpretive act constitutes a rule's content for a case, on the ground that a concept holds no self-sufficient boundary. Section 5 held that the same relational constitution bounds interpretation and excludes arbitrariness. Both are claims in the theory of concepts, and neither was argued there. This section supplies the ground.

There is a second reason to enter the material. The devices surveyed later in this paper embed epistemological positions without stating them. A definition clause presupposes that a concept can be given by conditions. A published criterion presupposes that classification can be specified in advance of the cases. A requirement that an examiner accept any defensible answer presupposes that a term admits of several correct applications at once. An institution choosing among these devices is choosing among theories of concepts, and it is better that the choice be visible.

7.1 The Definitional View

The oldest account holds that a concept is given by conditions individually necessary and jointly sufficient for its application, and that classifying an instance consists in determining whether the conditions obtain. Frege (1997) gives the position its sharpest modern form in requiring that a properly formed concept have determinate boundaries, so that for every object it is settled whether the concept applies.

The view is the implicit epistemology of a great deal of legal drafting. A definition clause states conditions; a schedule enumerates instances; a numerical threshold replaces an evaluative term. Section 6 treated these as devices for reducing interpretive load, and their rationale is definitional: a concept so specified can be applied by determining whether the stated conditions obtain.

The difficulty is that few concepts of interest admit of such specification. Attempts to state necessary and sufficient conditions for ordinary terms have generally failed, and the terms that carry the interpretive load in organizational rules, treated in §6 as standard and comparative, are conspicuously resistant. The definitional view therefore describes a condition that drafting can sometimes create and cannot generally presuppose.

7.2 Family Resemblance and Blurred Edges

Wittgenstein (1953) advances the counter-position. The instances falling under a general term may be related by a network of overlapping and criss-crossing similarities with no feature common to all, and the term is nonetheless in good order. To the objection that such a concept has blurred edges, the reply is that a blurred concept is still a concept, and that for many purposes a blurred one is exactly what is wanted.

The consequence for this paper is worth stating carefully, since it cuts against a natural assumption. The vagueness of an evaluative term in a rule is ordinarily treated as a drafting failure to be corrected where resources permit. On the Wittgensteinian view it may be the appropriate form for the concept, and the demand for sharp boundaries is a philosophical commitment and not a neutral standard of good drafting. Endicott (2000) develops this for law directly, holding that vagueness is ineliminable and serves purposes that precision would defeat.

7.3 Prototypes, Exemplars, and Graded Membership

Empirical work on human categorization supplies a third account and bears on the question of how a concept is in fact recognized.

Rosch (1978) established that category membership is graded. Subjects rank some instances as better examples of a category than others, do so consistently, and classify typical

instances faster than atypical ones. Categories are organized around prototypes, and membership shades off from them. Medin & Schaffer (1978) advance a variant on which classification proceeds by similarity to remembered instances, with no abstracted prototype required, so that the categories a person applies are a function of the instances they have encountered.

Two consequences bear on the interpretive moment.

The penumbra is not exceptional. Hart (1994) presented a settled core with an open border, and the empirical picture is of graded membership throughout, with clear cases at one end of a continuum and no boundary of the kind the core-and-penumbra image suggests. Section 6 reached the same conclusion for evaluative terms from the side of rule-drafting, and the two lines converge.

Divergence among competent interpreters is predicted. On an exemplar account, what a person classifies as relevant experience depends on the range of instances they have encountered under that description. Two interpreters of equal competence and good faith, having encountered different ranges, will draw the boundary differently, and neither will be able to detect the source of the difference by inspecting the rule. This is a mechanism for interpretive divergence that requires no bad faith, no negligence, and no disagreement about the facts, and it is worth having because the alternative explanations of divergence all impute a fault to somebody.

7.4 Background Theory in Classification

Murphy & Medin (1985) argue that similarity alone cannot account for the coherence of categories, and that concepts are embedded in background theories about what goes with what and why. Classification is accordingly shaped by an explanatory framework the classifier brings.

The consequence for this paper is a second and independent mechanism of divergence. Two interpreters who have encountered the same instances may classify differently because they hold different accounts of what the category is for. An interpreter who takes a relevance requirement to serve the protection of standards will draw its boundary differently from one who takes it to serve the identification of capacity, and the difference will present itself to each as a straightforward reading. This connects the epistemology to the doctrinal material of §9, where the attribution of purpose is precisely the point at which such background accounts enter and are seldom made explicit.

7.5 The Division of Linguistic Labour

Putnam (1975) argues that the extension of a natural kind term is fixed by the world and by the practice of a linguistic community, and not by any state of an individual speaker. Ordinary speakers use terms whose extension they cannot themselves determine, deferring to those in

the community who can, and Putnam names this the division of linguistic labour. Kripke (1980) supplies the companion account of reference fixed by an initial baptism and transmitted through a causal chain of use.

Two consequences follow, and they pull in opposite directions.

The first supports an arrangement described in §10. If extension is fixed by those competent to determine it, then an interpretive authority grounded in demonstrated competence has an epistemological warrant and is not merely a professional privilege. The tradition surveyed there, which locates standing to interpret in an assessable qualification, is answering a real feature of how the extension of terms is settled.

The second is a warning that runs throughout this paper. If extension is fixed by those who count as competent, then the determination of who counts is a determination of what the terms mean. Whoever is recognized as the expert fixes the extension for everybody else, and a party outside the circle of recognized competence has no standing to contest an extension even in principle. The division of linguistic labour is an epistemological account of how meaning is settled, and it is at the same time a description of an authority relation.

7.6 Vagueness and the Structure of the Penumbra

The philosophical treatment of vagueness bears directly on the dispute recorded in §8 and §9, and the correspondence is close enough to be set out.

Epistemicism holds that a vague term has a sharp boundary which nobody is in a position to know, so that borderline statements have determinate truth values that remain inaccessible (Williamson, 1994). Supervaluationism holds that a vague term admits of many admissible precisifications, that what is true on all of them is true, that what is false on all of them is false, and that what varies among them lacks a truth value (Fine, 1975). Degree theories assign intermediate values to borderline cases.

Set beside the legal positions, the alignment is striking. The epistemicist structure is the structure of the right-answer thesis: there is an answer, it is not accessible by any procedure the parties can operate, and the appearance of discretion reflects the limits of knowledge. The supervaluationist structure is the structure of Kelsen's frame: some readings are excluded because they fail on every admissible precisification, some are required because they hold on all, and among the remainder nothing settles the matter.

Position on vagueness	*Structure*	*Legal counterpart*
Epistemicism	Sharp boundary, inaccessible to knowledge	The right-answer thesis
Supervaluationism	Admissible precisifications; truth is truth on all of them	The frame, with an unsettled interior
Degree theories	Membership admits of intermediate values	Graduated intensity of review

The correspondence is offered as an aid to seeing what is at stake and not as an argument that either legal position is entailed by a position on vagueness. It does establish that the disagreement recorded in §9 is a version of a disagreement in the philosophy of language, and that neither side is peculiar to law.

The supervaluationist reading has a further use, since it gives a precise sense to the boundedness proposed in §5. A reading is inadmissible when it fails on every precisification the network of usages, purposes, and prior applications makes available. A reading is required when it holds on all of them. Between these the criterion is silent, which is the limitation §5 entered knowingly.

7.7 Interpretation as Conceptual Engineering

A recent literature asks what our concepts ought to be, treating concepts as instruments open to deliberate revision for the purposes they serve (Haslanger, 2000; Cappelen, 2018). The enquiry proceeds by asking what work a concept does, whether it does that work well, and what revision would improve it.

The bearing on this paper is direct and does not appear to have been drawn. An organ determining that a rule's term covers a case is doing what the conceptual engineer does deliberately: it settles what the concept shall cover going forward, in the light of the purposes the rule is taken to serve, and its determination enters the network as a usage available to govern later cases. The difference lies in the acknowledgement. The conceptual engineer announces that a revision is proposed and defends it as a revision. The interpreting organ announces a finding.

Two things follow. The description of the interpretive act given in §3 gains support from a direction independent of the arguments offered there. And the representational asymmetry entered in that section acquires a sharper form: what is presented to the affected party as the discovery of an existing content is, on this description, the exercise of a power to settle what a shared concept will mean, conducted without the vocabulary in which such an exercise is ordinarily defended.

7.8 Findings and Residue

The material assembled here supports the claims that §3 and §5 left unargued, and it does so from several independent directions. Concepts of the kind that carry interpretive load do not admit of definitional specification. Membership in them is graded, and the graded structure is a finding about human classification and not a defect of drafting. Extension is settled within a community and by those the community recognizes as competent. Divergence among interpreters of equal competence and good faith is predicted by two independent mechanisms, differing exemplar sets and differing background accounts of what the category is for. And the space of admissible readings is bounded by what the available precisifications permit, which is neither a point nor the whole.

Three consequences are carried forward. Institutional devices that presuppose the definitional view are working against the grain of how classification proceeds, which is why published criteria relocate the interpretive question and do not dissolve it. Divergence between an organ's reading and a party's reading is the expected case and supplies no evidence that either has erred. And the determination of who counts as competent to fix an extension is itself a determination of what rules mean, which returns the epistemology to the question of authority treated in §4.

What the material leaves open is whether the graded structure of classification can be made operational for the purposes of review. A reviewing body applying the criterion of §5 would need to establish what precisifications the network makes available, and no procedure for doing so is offered here or located elsewhere in the literature surveyed.

8 Indeterminacy and the Limits of Rule-Following

This section returns to the second question from the side of the philosophical and jurisprudential literature on rule-following, and prepares the fourth by showing where each account leaves the protection of a party unaddressed. Its result is narrow and load-bearing: the tradition has established that rules underdetermine their own application, and has established that the underdetermination is partial. What it has not established is any procedure by which a party may show that a determination made within the space of the underdetermination was wrongly made.

8.1 The Regress of Rules

The deepest statement of the difficulty is Wittgenstein (1953)'s. A rule does not contain its own application, since any course of action can be brought into accord with the rule under some reading of it, and any reading can be brought into conflict with it under another. Supplying a second rule to govern the reading of the first does not arrest the difficulty, since the second

rule requires reading in turn. The regress is not a defect of poorly drafted rules and is a feature of the relation between a general formulation and a particular case.

Kripke (1982) draws the sceptical consequence and then supplies what he calls a sceptical solution: what arrests the regress is not a fact about the rule and is a practice, sustained by a community whose agreement in judgment supplies the conditions under which a use counts as correct. The solution has been contested at length, and the feature of it that matters here survives the contest. Whatever arrests the regress is external to the rule and is constituted by a practice within which the rule is used.

This result is the language-side counterpart of the relational argument entered in §3. Both routes reach the same place. The extension of a rule's terms is fixed by something outside the rule, and that something has the form of a network of usages, purposes, and practices. The two routes differ in what they emphasize. The Wittgensteinian route emphasizes that the arresting practice is communal and that agreement in judgment is its ground. The relational route emphasizes that the party to whom a rule is applied occupies a position within the same network from which the rule takes its content, and may occupy it without any capacity to affect what the network supplies. The second emphasis is where the question of justice enters, and it is the emphasis the tradition has left comparatively undeveloped.

8.2 The Frame and the Act of Will

The most exact statement of the difficulty in legal theory is Kelsen (1967)'s. A higher norm stands to its application as a frame stands to what may be placed within it. The frame excludes: some applications are outside it and are for that reason unlawful. Within the frame the norm admits of several applications, all equally lawful, and nothing in the norm selects among them. The selection is an act of will performed by the applying organ, and legal science, whose office is cognition, can state the boundaries of the frame and can say nothing about which application within it is correct.

Two consequences follow that this paper adopts. The first is that the space of admissible interpretations is neither a point nor the whole, which is the same conclusion reached from the relational side in §3 and is stated by Kelsen with greater precision than by any subsequent writer. The second is that the applying organ is, within the frame, a maker of norms, and represents itself as a finder of them. Kelsen states the representation and treats it as a matter for legal science to correct; the concern here is with what the representation does to a party who would object, which is the third component of asymmetry entered in §3.

Kelsen's account also marks the limit of what a theory of norms can supply. If several applications are equally lawful, a party against whom one of them was selected has, on Kelsen's own terms, no legal ground of complaint, since legality is exhausted by the frame. The complaint that survives is a complaint about the exercise of will within the frame, and it is a complaint for which Kelsen's theory supplies no vocabulary. Naming that complaint is one of the tasks

of this paper.

8.3 Core and Penumbra

Hart (1994) gives the distinction that has organized the anglophone discussion. General terms possess a core of settled meaning, without which they could not function as rules at all, and a penumbra in which their application is genuinely open. In the core, application proceeds without choice. In the penumbra, the organ chooses, and the choice is guided by considerations that the rule alone does not supply.

Hart's distinction is often read as a concession to indeterminacy, and it is better read as a limitation upon it: most applications fall in the core, and the interesting cases are exceptional. That reading is sound for the class of rules Hart considered. It transfers poorly to the class of rules with which this paper is concerned. Where a rule's operative term is evaluative, such as relevance, merit, adequacy, suitability, or reasonableness, the penumbra is not an exceptional zone at the margin of a settled core and is the ordinary condition of the term's use. Section 12 does not depend on this observation, though the section on the objects of interpretation will, and it is entered here because it marks the point at which Hart's reassurance ceases to reassure.

The exchange between Hart (1958) and Fuller (1958) bears on the same point from the side of remedy. Fuller's position is that the penumbral choice is guided by the purpose the rule serves, and that purpose is not extraneous to the rule and is part of what the rule is. The position supplies a constraint upon interpretation and will be treated in its own right among the theoretical strategies, together with the difficulty that purpose is itself an object of interpretation.

8.4 Realism and the Indeterminacy Thesis

The American realists pressed the observation that the materials of legal reasoning underdetermine outcomes to a degree the doctrinal literature concealed. Llewellyn (1950) supplies the most economical demonstration: the canons of statutory construction come in opposing pairs, each canon met by a counter-canon, so that a court seeking a given reading will ordinarily find a canon licensing it. The demonstration is directed at the canons and generalizes to any body of interpretive guidance sufficiently rich to cover the cases, since richness is what supplies the opposing pair.

Critical legal studies advanced a stronger thesis, on which legal materials are radically indeterminate and outcomes are settled by considerations the materials conceal. The stronger thesis has been resisted with force, and Solum (1987) states the resistance in the form this paper adopts: the materials are moderately indeterminate, which is to say that they exclude a great deal and select nothing uniquely within what they permit. Moderate indeterminacy is

Kelsen's frame restated in the vocabulary of a different tradition, and the convergence of two traditions upon it is a reason to treat it as settled.

The realist contribution to the fourth question is chiefly negative and is nonetheless valuable. If interpretive guidance can be found on both sides of most questions, then a requirement that an organ give reasons for its interpretation secures less than it appears to secure, since a reason will be available for whichever reading the organ has reached. This observation will recur, in its institutional form, among the failure modes.

8.5 Legitimation Through Procedure

Luhmann (1969) supplies the observation that completes this section. Procedures produce acceptance of decisions, and they do so by a mechanism largely independent of the correctness of what is decided. Participation absorbs protest: a party who has been heard, whose submissions have been received, and who has exhausted the steps made available, is thereafter in a position where continued objection has no institutional form, and expectations are restructured around the outcome.

Luhmann's finding is descriptive, and its significance for a normative inquiry is considerable. It establishes that procedural elaboration and interpretive correctness are separable, and that the first can be increased without the second. An organization may therefore hold impeccable procedures, produce high acceptance among those subject to them, and interpret its rules in a manner no party is positioned to contest, with the acceptance functioning as evidence that nothing is wrong. This is the mechanism by which the interpretive moment becomes invisible at the institutional scale, and it will be met again in §12 in the empirical procedural-justice literature, which measures the acceptance Luhmann describes and is sometimes read as measuring justice.

8.6 The Residue

The accounts surveyed in this section establish three things and leave one open. They establish that rules underdetermine their applications, that the underdetermination is bounded, and that what arrests it is a practice external to the rule. They leave open what a party may say, and to whom, when a determination within the bounded space has gone against them. Kelsen's answer is that no legal complaint survives the exhaustion of the frame. Hart's is that the choice was made on grounds the rule did not supply, which describes the choice and does not evaluate it. The realists' answer is that a reason will always be available, which is a warning and no remedy. Luhmann's is that the party will in due course accept it. The remainder of this paper is addressed to that residue.

9 Doctrines of Statutory and Constitutional Interpretation

This section discharges the second question in its developed form. Section 5 identified five modes and left a difficulty: where the modes diverge, nothing among them settles which governs. The doctrines surveyed here are the developed answers to that difficulty. Each proposes an ordering of the modes, each defends the ordering by an account of what interpretation is for, and each meets an objection that the section records. The section closes by asking which of them an organization is in a position to use, and the answer bears directly on §23.

9.1 Doctrines as Orderings

The doctrines are read here as second-order proposals, and the reading is adopted for the reason given at the end of this subsection. None of them denies that the modes exist. Textualists consult purpose in extremity, purposivists read the text first, and every school attends to prior determinations. What divides them is the ordering: which mode is consulted first, which may override which, and what is required before a subordinate mode may be reached.

Reading them this way has two advantages for the present inquiry. It makes the disagreement tractable, since orderings can be compared. And it locates the disagreement where §5 left it, which keeps the survey inside the containment device stated in §1.

9.2 Textualism

Textualism orders the modes with settled usage first and treats the remaining modes as available only where usage leaves the matter open. Scalia (1997) and Scalia & Garner (2012) give the developed statement, together with a systematized account of the canons by which usage is determined.

The defence is threefold and each limb concerns constraint. The text is what was adopted, so a reading tied to the text is tied to what the adopting authority actually did. The text is what parties can read, so notice is served. And the text is the material least amenable to the interpreter's preferences, so the ordering constrains the interpreter more tightly than orderings placing purpose or context first.

Two objections bear on this paper. The canons come in opposing pairs, so within textualism a selection among canons remains, and the selection is uncontrolled by the ordering (Llewellyn, 1950). And the determination of settled usage requires materials, whether dictionaries, corpora, or the interpreter's linguistic competence, and each of these is a body of usage assembled by somebody for some purpose. Textualism's claim to draw on the least is a claim to draw on a region of the network whose composition is less visible, and its constraint is therefore real and smaller than advertised.

9.3 Intentionalism

Intentionalism orders the modes with the purpose actually held by the adopting authority first, and looks to records of deliberation to establish it. The mischief rule is its oldest form and legislative history its modern instrument.

The standing objection is that a collective body holds no single mental state, that recorded statements are made by individuals who may be unrepresentative, and that a record known to be consulted becomes an object of strategic composition. The objection is strong for legislatures. For organizations it is weaker in one respect and stronger in another: the adopting body may be small enough to hold something like a shared intention, and the record of its deliberation is ordinarily unavailable to any party who would invoke it.

9.4 Purposivism

Purposivism orders the modes with purpose first and detaches purpose from actual intention. Hart & Sacks (1994) supply the classical statement, directing the interpreter to assume that the rule was made by reasonable persons pursuing reasonable purposes reasonably, and to attribute the purpose that assumption yields. Barak (2005) gives a systematic modern development, in which purpose is a legal construct assembled from subjective and objective components.

Attributed purpose escapes the objection to intentionalism and incurs its own. The attribution is performed by the interpreter, from materials the interpreter selects, under a standard of reasonableness the interpreter supplies. Purpose so understood constrains the interpreter to the extent that the attribution is disciplined, and the discipline is itself a matter of interpretation. This is the regress of §8 arriving at the level of the ordering, and it is the difficulty that §5 anticipated in noting that purposive interpretation supplies whatever the interpreter takes the purpose to have been.

9.5 Dynamic Interpretation

Eskridge (1994) holds that a statute's meaning legitimately evolves, that the interpreter's present circumstances bear upon what the text now requires, and that a doctrine denying this describes badly what interpreters actually do. The ordering places present conditions among the materials properly consulted.

The objection is that evolution weakens notice and transfers to the interpreter a power the adopting authority did not confer.

The doctrine deserves particular notice here for a reason unconnected with its merits in the legal debate. It is the doctrine most congenial to the criterion advanced in §25, since it treats a reading as revisable by design and regards the possibility of revision as a feature of interpretation and not a defect of it. A practice organized on dynamic lines holds its questions

open as a matter of doctrine. A practice organized on strict textualist lines may hold them open as well, and does so for a different reason, since the text remains available to be read again. What closes a question is neither doctrine as such and is the institutional condition under which no party can raise it, which is the finding §23 reaches by another route.

9.6 Constructive Interpretation

Dworkin (1986) rejects the framing shared by the doctrines above. Interpretation of a legal practice is constructive: the interpreter seeks the reading that both fits the materials and shows the practice in its best light. Law as integrity requires that the practice be read as the work of a single author of consistent principle, and the chain novel supplies the image, each interpreter writing a chapter constrained by what precedes and free within that constraint. The strong claim that follows is that hard cases have right answers, and that the appearance of discretion reflects the difficulty of the question and not an absence of an answer to it.

Dworkin's position is the most serious opponent of the premise this paper has adopted, and the confrontation should be stated plainly. The paper has followed Kelsen (1967) in holding that the materials leave a space within which several readings are equally admissible and nothing in the materials selects among them. Dworkin denies that any such space exists, since fit and justification together select, even where the selection is contestable and no procedure establishes it.

Three observations are entered in response, and only the third does real work.

The first is that the disagreement is narrower than it appears for the class of rules at issue here. Integrity draws on the density of a practice, and the argument that one reading shows a practice in its best light requires a practice with a history, a body of prior determinations, and articulated principles running through them. Organizational rule-interpretation ordinarily supplies none of these, so the resources that would select an answer are absent whether or not they would select one in a mature legal system.

The second is that Dworkin's account is directed at what an interpreter ought to do and is compatible with an observer's inability to verify that it was done.

The third is decisive for this paper, and it concedes the philosophical point. Suppose Dworkin is right and every question has a right answer. Interpretive injustice, on that supposition, becomes interpretive error, and the whole apparatus of this paper survives the change of name. The questions that concern it are who is positioned to establish the right answer, what follows when the organ's answer is final and mistaken, and what protects a party against whom a mistaken answer stands. Those questions arise in the same form under a right-answer thesis as under a frame thesis, and the answers given in §23 are unaffected. What the right-answer thesis would remove is the paper's occasion to say that no answer was uniquely required. What it leaves untouched is the paper's subject.

9.7 The Constitutional Instance

The same disagreement recurs at constitutional scale between originalism and living constitutionalism, with the stakes raised by the difficulty of amendment and by the antiquity of the text. The dispute adds little that is structurally new and it supplies one contribution this paper adopts.

Bobbitt (1982, 1991) treats the forms of constitutional argument as modalities, historical, textual, structural, doctrinal, ethical, and prudential, and holds that they constitute the grammar within which constitutional propositions are made intelligible. His claim of interest here is that the modalities are incommensurable, that no meta-modality ranks them, and that when they conflict the choice among them is an act for which the interpreter is answerable in conscience and not by rule.

This is the most honest response available to the difficulty of §5, and it is a response that declines to resolve it. If Bobbitt is right, the search for an ordering is misconceived, the doctrines above are each an attempt to elevate one modality by fiat, and what remains at the point of conflict is a choice attributable to the person who makes it. For this paper the consequence is congenial and uncomfortable in equal measure. It supports the claim that the interpretive moment is an exercise of a power that the materials do not determine. It removes any prospect of a doctrine that would discipline the exercise from outside.

9.8 The Institutional Turn

Sunstein & Vermeule (2003) redirect the question. Whether a given interpretive doctrine is correct cannot be settled by an account of meaning alone, since a doctrine is a decision procedure administered by particular interpreters with particular capacities operating under particular constraints. The choice among doctrines depends on the error costs and decision costs those interpreters will actually incur, and on the effects the doctrine will have on the behaviour of those who draft and those who are governed. A formalistic doctrine may be justified for interpreters of limited capacity even where a more flexible doctrine would be superior for ideal ones.

This turn is the most important in the section for present purposes, and for two reasons.

It supplies the transition to the sections on practice, since it makes institutional condition a determinant of what interpretation should be and not merely of what it is.

And it changes what the survey of doctrines can deliver. If the appropriate doctrine is a function of the interpreter's capacities and the surrounding institutional facts, then no doctrine surveyed here transfers to organizations by demonstration of its correctness. What transfers is a question: given this interpreter, these materials, and this population of affected parties, which ordering produces the fewest and least serious errors, and what does each ordering cost to administer.

9.9 The Doctrines Compared

The doctrines may be set beside one another. The third column states the ground on which each ordering is defended, and the fifth states what a body must possess before the ordering is available to it, which is the finding developed in the subsection following.

Doctrine	*Consulted first*	*Ground of the ordering*	*Characteristic objection*	*Materials required*
Textualism	Settled usage of the words	Constraint on the interpreter; notice to the governed	Canons come in opposing pairs; usage is itself assembled	Adopted text; corpora or dictionaries
Intentionalism	Purpose actually held by the adopting body	Fidelity to what was enacted	No collective mental state; records composed strategically	Record of deliberation
Purposivism	Purpose attributed on a standard of reasonableness	Purpose is part of what the rule is	The attribution is performed by the interpreter	Materials supporting attribution
Dynamic interpretation	Present conditions alongside the text	Describes what interpreters do; rules outlive their settings	Weakens notice; transfers power not conferred	Account of original and present settings
Constructive interpretation	The reading that best fits and justifies the practice	Integrity; the practice read as one author's work	Demands of the ideal interpreter; imports substantive commitments	Dense practice with a history of decisions
Modalities	No ordering; forms are incommensurable	Choice at conflict is answerable in conscience	Supplies no discipline at the point of conflict	Professional community sharing the grammar
Institutional approach	Whichever ordering the interpreter administers best	Error costs and decision costs of actual interpreters	Correctness becomes contingent on setting	Knowledge of interpreters and effects

9.10 The Transfer to Organizations

The doctrines were developed for courts reading statutes and constitutions, and their transfer to organizations reading their own rules is uneven in a way that has a pattern.

Each doctrine presupposes an infrastructure. Textualism presupposes an adopted text and a body of usage. Intentionalism presupposes a record of deliberation. Purposivism presupposes materials from which a purpose can be attributed and a practice of attributing purposes

with discipline. Dynamic interpretation presupposes an articulable account of present conditions and of the rule's original setting. Constructive interpretation presupposes a dense practice with a history, prior determinations, and principles running through them. Bobbitt's modalities presuppose a professional community within which the modalities are recognized as the grammar of argument.

Organizations possess these unevenly and ordinarily possess few. The consequence, stated as a finding of this section, is that the doctrines available to an organization are a function of its documentary and professional infrastructure, and that the orderings which constrain the interpreter most tightly are the ones demanding most infrastructure. A body with an adopted text and nothing else can practise a thin textualism and can practise nothing else, and thin textualism is the ordering that leaves most to the interpreter while appearing to leave least, since the determination of settled usage in the absence of corpora, records, and a professional community is a determination the organ makes and no party can check.

This finding will recur in institutional form in the sections on practice, where the devices most often proposed for organizations are devices that build infrastructure: published criteria, recorded reasons, indexed determinations, and precedent within the body.

9.11 Findings and Residue

This section establishes that the doctrines are orderings of the modes, that each ordering meets a serious objection, that the strongest philosophical opponent of the paper's premise leaves its subject untouched, that the institutional turn makes the choice among orderings depend on interpreter and setting, and that organizations can use only the orderings their infrastructure supports. It leaves open whether any ordering can be justified independently of institutional condition, which is a question this paper does not pursue, and it contributes to Q3 in §28.

10 Architectures of Interpretive Authority Beyond the Western Doctrines

This section returns to the first question. Section 4 established that standing to interpret is conferred at the core and generated at the edge, and left open whether interpretive standing may be delegated and what grounds its legitimacy. The doctrines surveyed in §9 say little about either, since they were developed for a setting in which the identity of the authoritative interpreter is settled by constitutional arrangement and the interesting questions concern how that interpreter should proceed. One tradition treated the prior question at length, and its architecture supplies resources the Western material does not foreground.

A caution governs the whole section. What follows is a reading of a large tradition for a narrow purpose, and it selects the structural features bearing on interpretive authority while passing over most of what that tradition contains. Specialists will find the treatment thin, and the claims entered are confined to structure.

10.1 Interpretation Separated from Decision

Islamic legal theory begins from a distinction with no counterpart in the doctrines of §9. The divine law as such and the jurists' understanding of it are named separately, and the rulings that make up the developed law belong to the second category. A ruling is a qualified person's understanding of what the law requires, and it is held as such by the tradition's own vocabulary (Hallaq, 1997; Weiss, 1998).

The consequence for interpretive authority is considerable. A system whose vocabulary distinguishes the law from the understanding of it has built the fallibility of interpretation into its own self-description, and has done so without weakening the authority of what is decided. The determination binds and is known to be a determination.

The institutional expression of this is a separation the Western material treats as unusual. The jurist who issues an opinion and the judge who decides a case occupy distinct offices with distinct powers (Masud et al., 1996). The opinion is authoritative in the sense that it states what a qualified interpreter holds the law to require, and it does not dispose of the case. The judgment disposes of the case and is not, on that account, a superior statement of the law. A party may seek an opinion from a jurist who has no power over them, and the opinion's authority rests on the jurist's standing in the interpretive community.

Two features of this arrangement bear directly on the questions left open in §4.

Interpretive authority is here delegable, and its delegation is the ordinary case. The organ that decides is not the sole or even the principal interpreter, and the interpretive function is discharged by a body of persons who hold no decisional power at all.

And standing to interpret is grounded in demonstrated competence. The qualifications required of one who may perform independent derivation are articulated at length: command of the language, of the source texts, of the received consensus, and of the methods by which rulings are derived. One who lacks them follows a qualified jurist, and the following is a recognized and respectable position with a name of its own. Authority thus rests on a public standard of competence, assessable by others holding the same competence, and it is held independently of office.

10.2 Plurality and the Standing of Disagreement

The second feature of the tradition bearing on this paper is its treatment of disagreement.

Interpretive work was organized into schools, each transmitting its own methods and doctrines, each recognizing the others as legitimate, and each maintaining its positions alongside theirs. Disagreement among qualified interpreters has a name and a literature, and the plurality was accommodated as a standing condition of the law and not as a defect awaiting resolution.

Underlying this is a theoretical dispute that the reader of §8 and §9 will recognize. One

classical position holds that where qualified interpreters differ, each has attained what was required of them and each ruling is correct. A rival position holds that one answer is correct and the interpreter who misses it has erred, while remaining blameless for having reasoned properly. The dispute is the same one that divides Kelsen (1967) from Dworkin (1986), arrived at independently and some centuries earlier, and its terms are close enough that the correspondence deserves recording.

What the tradition adds is the institutional consequence it drew from the dispute, which the modern debate has not drawn. Whichever position was taken, plurality was accommodated institutionally: schools coexisted, a party might follow one, and a ruling from one school did not extinguish the others. The disagreement about whether one answer is correct was thereby separated from the question of whether one answer must be enforced.

A historiographical caution belongs here. The received account that independent derivation ceased at a certain period, the gate having been closed, has been challenged at length, and the challenge is now widely accepted in outline (Hallaq, 1984). The structural point made here does not depend on the resolution of that controversy, since it concerns the architecture and not its vitality at any particular date.

10.3 Reception and Transplant

The devices of the modern administrative state reached East Asia through reception of continental doctrine, and the receiving systems modified what they received. Japan's administrative procedure legislation requires agencies to establish and publish criteria against which applications and dispositions are assessed, which converts a portion of interpretive practice into published rules. The arrangement is treated in §23 among the devices, and it is noted here because it illustrates the point made by the institutional turn of §9: a device transplanted into a different institutional setting operates differently, and its efficacy is a function of the setting and not of its form.

10.4 The Structural Resources Supplied

Two structural resources emerge from the material of this section, and each answers a question the Western doctrines leave unaddressed.

Separation of interpretive from decisional authority. An interpretive function may be discharged by persons holding no power to dispose of the case. This bears directly on the recursion identified in §3, since a power that determines the scope of its own review is recursive in a way that a power to interpret held apart from the power to decide is not. Whether the separation can be reproduced in a modern organization, and whether it relocates the recursion or reduces it, is Q1 of §28, and the material of this section is evidence that the arrangement is possible and has been sustained at scale.

Competence as the ground of standing. Interpretive authority may rest on a public and articulated standard of qualification, assessable by others who hold it. This is a candidate answer to Q2, and it is a demanding one, since it requires a community capable of assessing competence and a body of method against which competence is measured. Sections 9 and 23 both note the absence of such communities around most organizational rule-interpretation.

10.5 Cautions on Transfer

Islamic legal theory is treated here as a source of structure and not as a model of justice. It was administered within its own asymmetries, and access to the interpretive resources described was unevenly distributed by status, by wealth, by sex, and by locality. A reader who took this section for an argument that these arrangements were more just than those surveyed elsewhere would be taking it for something it does not assert.

And the institutional turn applies with full force. A device drawn from one setting and installed in another will operate according to the capacities and incentives of the new setting. The resources identified here are entered as possibilities whose transferability is undetermined, and determining it is work this paper does not undertake.

10.6 Findings and Residue

This section establishes that interpretive authority has been separated from decisional authority at scale and that standing has been grounded in assessable competence. It supplies evidence bearing on Q1 and Q2 of §28 and settles neither, since the possibility of an arrangement in one setting is weak evidence for its availability in another.

11 Justice in Legal Interpretation

The sections preceding this one have asked how interpretation proceeds and who is positioned to perform it. This section asks what has been said about when interpretation is just, which is the fourth question in the form the legal tradition has given it. Five accounts are treated. Each makes a normative demand upon the interpretive act itself, each is the nearest ancestor of some part of the criterion advanced in §25, and each stops short of the case this paper is concerned with, for a reason the section identifies in each instance.

11.1 Congruence as a Condition of Legality

Fuller (1969) sets out eight requirements whose satisfaction constitutes what he calls the inner morality of law, and the eighth concerns interpretation directly. There must be congruence between the rules as declared and the actions of the officials who administer them. A system

in which the declared rule says one thing and official action does another has failed as a legal system, and has failed in a manner distinct from having bad rules or reaching bad outcomes.

Two features of Fuller's treatment matter here. He treats the failure of congruence as a matter of degree and as an aspiration toward which a system moves, so that legality is a scalar property of an institution and not a threshold it crosses. And he identifies among the causes of failure not only corruption and indifference but mistaken interpretation, so that an official who misreads a rule impairs legality by doing so, without any impropriety of motive.

Congruence is the closest classical ancestor of the criterion of §25, since both treat the relation between rule and application as an object of normative assessment in its own right. The difference is exact and it is the reason congruence cannot serve here. To ask whether official action conforms to the declared rule presupposes that the declared rule has a content against which conformity may be measured. Where the rule's term is determinate, congruence has purchase and is a serviceable test. Where the term is a standard or a comparative, which §6 identified as the class carrying the interpretive load, the content against which conformity would be measured is what the interpretive act supplies. Congruence therefore has least to say exactly where the question is live, and the requirement passes over the penumbral case in silence.

11.2 The Rule of Law and the Discipline of Discretion

Raz (1979) treats the rule of law as the law's capacity to guide those subject to it, and derives from that capacity a set of principles: rules must be prospective, open, and clear, must be relatively stable, must be made by open and stable general rules, and must be administered by an independent judiciary, with accessible courts and observance of natural justice. He adds a principle that bears on the present subject: the discretion of agencies charged with administering the law should not be permitted to pervert it.

Raz's account is instrumental and he says so, treating the rule of law as a negative virtue that reduces a danger created by law itself. Two limits follow for this paper. The capacity to guide, like congruence, presupposes ascertainable content, so the account addresses the vagueness of rules as a defect of drafting and does not address the interpretive act that supplies content where drafting could not. And the principles concerning independent adjudication and accessible courts are addressed to legal systems, so they identify a condition organizations mostly do not satisfy without offering anything to a party in an organization that does not.

11.3 The Argumentative Dimension

Waldron (2011) argues that the dominant conceptions of the rule of law have overweighted rules and underweighted procedure, and that a legal system is characterized as much by its argumentative apparatus as by its norms. Courts hear parties, receive submissions about what

the law requires, give reasons, and permit appeal. On Waldron's account these are constitutive of legality and are not administrative accessories to it, and among them is the opportunity of a person affected to argue about what the law means as applied to their case.

This is the nearest existing normative demand to the criterion advanced here, since it holds that the standing to contest an interpretation is a component of legality itself. A system that determined applications without hearing argument about them would be deficient as a legal system on Waldron's account, whatever the quality of its determinations.

Two limits attach. The account is developed for legal systems possessing courts, and its transfer to bodies without them is a question Waldron does not take up. And it establishes an opportunity to argue without addressing the condition identified in §3, in which the body that receives the argument about the meaning of a rule is the body whose interpretation is contested, and whose competence to hear the argument at all is settled by its own reading of the rules that govern challenge. An opportunity to argue before the author of the reading is worth something and is worth less than the account assumes.

11.4 Participation as the Mark of Adjudication

Fuller (1978) distinguishes adjudication from other forms of social ordering by the mode of participation it accords the affected party. Contract accords participation through negotiated consent; managerial direction accords none of a comparable kind; adjudication accords the distinctive participation of presenting proofs and reasoned arguments. The distinguishing feature is not the presence of a decision-maker and is the party's opportunity to present a case for a decision in their favour.

Two consequences bear on this paper.

The first is normative and supports the criterion. If presenting reasoned argument is what makes adjudication the form of ordering it is, then a party's contribution to the determination is constitutive of the form and not a courtesy extended within it. A determination reached without any such opportunity is something other than adjudication, whatever the deciding body is called.

The second is a limit, and it is severe. Fuller's account defines a form and does not require that any given decision take that form. An organization allocating scarce goods is ordinarily engaged in managerial direction on Fuller's taxonomy, and managerial direction carries no participation requirement of the adjudicative kind. The account thus explains why participation rights do not attach to admission, appointment, or funding decisions, and in explaining it, licenses the absence. This is a case where the tradition's own vocabulary works against the party.

11.5 Legality in Private Organizations

Selznick (1969) supplies the only sustained treatment in this tradition of the question this paper poses, and does so for private governance. Legality on his account is a value that private institutions can realize in degree, through the movement from managerial prerogative exercised at will toward administration governed by rules, with articulated standards, records, reasoned decisions, and channels of appeal. Industrial due process is his name for the resulting condition, and the study documents its emergence in the internal governance of firms.

The account is the direct precedent for the present subject, and one feature of its findings requires notice here because it anticipates §23 from a different direction. The developments Selznick documents occurred where a countervailing organized force was present, most often a union with the capacity to make the employer's exercise of prerogative costly, and where legal doctrine had begun to attach consequences to arbitrary internal action. Legality within private organizations, on the evidence of the study that established the concept, developed where somebody outside the management held something the management needed. This is the stake identified in §23, observed historically in the domain where the concept of organizational legality originated.

11.6 Interpretation and Application

One further account belongs here for the record, since it bears on §3. Gadamer (2004) holds that understanding a normative text and applying it to a case are aspects of one operation, so that a rule is understood in and through its application to circumstances, and legal interpretation is exemplary of understanding generally for that reason.

The account is descriptive and it carries a normative implication that this section should register. If application is internal to understanding, then the demand that an interpreter first ascertain a meaning and afterwards apply it describes something that does not occur, and a fidelity requirement framed in those terms asks for the impossible. What can be asked is that the application be one the text can bear and that the interpreter remain open to the case altering what they took the text to require. The second of these is close to what §25 will require of an institution, transposed to the interpreter's own disposition.

11.7 Findings and Residue

The accounts surveyed establish a good deal. Interpretation is within the concerns of legality and is not a merely technical matter lying outside them. Congruence between declared rule and official action is a condition of a system's claim to legality and fails through misreading as well as through corruption. The standing to argue about what a rule means is a component of the rule of law and not an accessory to it. The affected party's presentation of reasoned argument is constitutive of adjudication as a form. And legality is a value that private orga-

nizations can realize in degree, which is the premise the present paper requires and does not have to argue for.

What the tradition leaves is a pattern. Each account either presupposes a determinate content against which application may be measured, which is what the penumbral case lacks, or presupposes an independent tribunal before which argument may be made, which the organizational case ordinarily lacks, or documents conditions that obtained where a countervailing force was present, which is the case §23 identifies as the one where the difficulty does not arise. The penumbral determination, made finally by a body answering to nobody, is the residue none of them reaches, and it is the case this paper takes as its subject.

12 Relation to Adjacent Concepts of Injustice

This section individuates the concept. A concept that cannot be distinguished from its neighbours has not been introduced, and interpretive injustice has four neighbours near enough that the burden falls on the present account to show what it adds. The four are hermeneutical and testimonial injustice, procedural injustice, domination, and the jurispathic office. Each is treated by locating where its injustice resides, in whom it is borne, by what mechanism it operates, and what remedy it implies, since concepts that share a name may still be told apart by their remedies.

12.1 Hermeneutical and Testimonial Injustice

Fricker (2007) distinguishes two epistemic injustices. In testimonial injustice a speaker receives a credibility deficit owing to prejudice attaching to their identity. In hermeneutical injustice a collective deficiency in interpretive resources leaves a significant area of a person's experience unintelligible, to others and often to themselves, with the deficiency falling unequally on those excluded from the practices in which such resources are generated.

Hermeneutical injustice is the nearest neighbour by name and is a different concept. Its locus is a collective stock of resources; the present concept's locus is an office. Its bearer suffers an inability to render an experience intelligible; the bearer here suffers a determination rendered intelligibly and finally by someone else. Its mechanism is a gap; the mechanism here is an exercise. And the remedies diverge sharply, which is the decisive test. The remedy for hermeneutical injustice is the enrichment of the collective interpretive stock, together with the virtue Fricker calls hermeneutical justice in the individual hearer. Enriching the collective stock does nothing for a party whose case has been determined by an organ holding authority to fix the meaning of its own rules, since the determination stands whatever the surrounding vocabulary contains.

One overlap should be conceded precisely. The representational asymmetry entered in §3, on which ordinary language supplies thin terms for objecting to an interpretation, is a

hermeneutical deficit in Fricker's sense. A party who cannot articulate the objection because no available vocabulary expresses it suffers the injustice Fricker describes, and suffers it in addition to the one described here. The present paper may be read, in that narrow respect, as an attempt to supply a portion of the missing vocabulary. The concepts remain distinct: supplying the vocabulary removes the hermeneutical deficit and leaves the interpretive authority exactly where it was.

12.2 Procedural Injustice

Rawls (1971) distinguishes perfect, imperfect, and pure procedural justice. Where an independent criterion of the correct outcome exists and a procedure reliably attains it, the procedure is perfect; where the criterion exists and no procedure reliably attains it, imperfect; where no independent criterion exists and the outcome is defined as whatever a fair procedure produces, pure.

Interpretation sits awkwardly in this scheme, and the awkwardness is instructive. An independent criterion appears to exist, since the rule is there and the parties dispute what it requires, which places the case under imperfect procedural justice. Yet the argument of §3 and §8 holds that within the frame no criterion selects a unique reading, which pushes the case toward pure procedural justice, on which whatever the organ determines through a fair procedure is by definition what the rule required. The second characterization is the one organizations implicitly adopt, and adopting it dissolves the possibility of interpretive injustice by construction. This paper resists the dissolution on the ground given in §3: the space of admissible interpretations is bounded, so a determination may be shown to sit outside the network from which the term takes its content, and a criterion therefore exists even where it selects no unique answer. Procedural justice of the pure kind is available for the selection among admissible readings and is unavailable for the question whether a reading was admissible.

The empirical literature raises a second and sharper difficulty. Tyler (1990) establishes that perceptions of fairness turn on voice, neutrality, respectful treatment, and trustworthiness, and that they drive acceptance of outcomes and compliance with authority more strongly than outcome favourability does. Read alongside Luhmann (1969), the finding carries an uncomfortable implication for any account that treats procedural justice as sufficient. The features that produce the perception of fairness are features an organization can supply while its interpretive practice remains beyond contest. Acceptance is therefore an unreliable indicator of interpretive justice, and a well-run organization may generate acceptance precisely where the present concept would locate an injustice.

12.3 Domination and Contestability

Pettit (1997) defines domination as subjection to the capacity of another to interfere arbitrarily

in one's choices, where interference is arbitrary when it need not track the interests and ideas of the person affected. Freedom as non-domination requires that such capacity be removed, and Pettit's institutional proposal turns centrally on contestability: power is rendered non-arbitrary when those subject to it can effectively contest its exercise and require it to answer to their avowable interests.

This is the closest neighbour, and the relation to it is one the paper should state as complementary. Domination names a standing relation and is indifferent to the mode through which interference occurs. Interpretive injustice names a mode, and the mode is of interest because it is the one that presents itself as the absence of interference. An organ that interprets is not, on its own account, interfering at all, and is applying a rule to which both parties are subject.

The complementarity becomes substantive at the point of remedy. Pettit's remedy for arbitrary power is contestability, and the recursive component of asymmetry entered in §3 bears directly upon it. The rules that determine whether a contestation lies, whether it is in time, whether it concerns a matter within review, and whether the contestant has standing are rules of the organization, interpreted by the organization. Contestability is therefore itself an object of the interpretive power it is meant to constrain. This is offered as a contribution to the republican account and not as an objection to it: it identifies a mechanism by which the republican remedy can be absorbed, and the identification is of use to anyone attempting to institutionalize contestability in a body that writes its own rules.

12.4 The Jurispathic Office

Cover (1983) holds that normative worlds are generated abundantly by communities, each with its own account of what its law means, and that the distinctive work of a court is to suppress the competitors: courts are jurispathic, and they kill law by choosing one reading and extinguishing the others that were living in the communities that held them.

Cover supplies the vocabulary nearest to what the later sections of this paper require, since he treats interpretation as an act with generative and destructive effects upon normative worlds. Two differences should be marked. Cover's setting is jurisgenerative plurality, in which the party whose reading is extinguished holds a developed nomos of its own; the setting here is ordinarily one in which the party holds a case and no competing normative world. And Cover's account is descriptive of a role he takes to be unavoidable, since a plural legal order requires that some readings be suppressed if any are to be enforced. The present account does not dispute the necessity of determination and asks after what a determination does to the capacity of the relation within which it was made, which is a question Cover does not pose.

12.5 The Individuation Stated

The four comparisons may be summarized.

Concept	*Locus*	*Bearer suffers*	*Mechanism*	*Implied remedy*
Hermeneutical injustice	Collective stock of resources	Unintelligibility of experience	Deficit	Enrich the stock
Procedural injustice	The path to decision	Denial of voice or neutrality	Defective process	Reform the process
Domination	A standing relation	Liability to arbitrary interference	Capacity to interfere	Institutionalize contestation
Jurispathic suppression	The plural legal order	Extinction of a normative world	Authoritative choice	Accepted as unavoidable
Interpretive injustice	An office holding rules	A determination of the rule's content for their case	Constitutive exercise, closed upon its own review	Open question

Two features of the final row distinguish it from the others. The mechanism is constitutive, so the party is bound by a content the rule did not carry before the decision. And the mechanism is closed upon its own review, so the ordinary remedy of the third row, institutionalized contestation, is exposed to the very power it constrains. The final column is left open deliberately. Each of the neighbouring concepts arrives with a remedy attached, and the burden of the remainder of this paper is that the remedies available for interpretive injustice are structurally limited in a way the others are not.

13 Theoretical Strategies for Constraining Interpretation

Section 9 asked which mode of interpretation governs where the modes diverge. This section asks a prior question: what could discipline an interpreter at all. A doctrine proposes an ordering. A strategy proposes a source of constraint, and the doctrines draw upon the strategies without being identical with them. Five families are distinguished here, and the fifth is the one to which the account of §25 is most closely related.

13.1 Constraint by Text

The first strategy fixes content by the words of the rule, and its instruments run from ordinary textualist reading through definition clauses and controlled vocabularies to the complete specification of a rule as a decision procedure.

The limiting case deserves separate notice, since it is a live proposal and not a thought experiment. A rule may be expressed in a form admitting of mechanical execution, whether as an

algorithm, a decision table, or executable code, and bodies administering high volumes of like cases have moved substantial parts of their rule systems into that form. Hildebrandt (2015) examines the transformation and its consequences for legal protection. Where the transformation is complete the interpretive moment disappears from the point of decision, since nothing remains to be determined when the case arrives.

13.2 Constraint by Purpose

The second strategy fixes content by the end the rule serves, holding that a reading defeating the end is thereby excluded. Its instruments are purpose clauses, recitals, statements of objectives, the mischief rule, and the teleological method. The strategy is the one most often recommended to organizations, since it appears to require only that the body state why a rule exists.

13.3 Constraint by Procedure

The third strategy disciplines the interpreter through the manner of proceeding, leaving the content of the determination formally open. Its instruments are the requirement to give reasons, the composition of the deciding body, the separation of the function of investigating from the function of deciding, the availability of appeal, the publication of determinations, and time limits within which a party may respond. This family is the one on which institutional practice principally relies, and §23 surveys its instruments in their developed forms.

13.4 Constraint by Community

The fourth strategy locates the discipline in a community of competent practitioners. An interpreter proceeds under the standards of a practice, and what constrains them is the requirement that their reading be one they could defend to others who hold the same competence and would recognize a departure.

Fish (1980) gives the strong statement, on which interpretive communities supply the assumptions that make a reading available at all, so that the constraint operates before the interpreter chooses and shapes what presents itself as a possible reading. Brandom (1994) supplies a more general account of the practice within which such constraint operates, in which participants keep score of one another's commitments and entitlements and the practice of giving and asking for reasons supplies the discipline. The communal solution to the rule-following problem noticed in §8 belongs to this family, and so does the arrangement described in §10, in which standing to interpret rests on a competence assessable by others holding it.

This family is the one the present account is nearest to, since it locates constraint in a relation among parties and not in a property of the text or of the end. Section 14 identifies where it and the account of §25 part.

13.5 Constraint by Reflexivity

A fifth strategy addresses itself to systems and not to interpreters. Teubner (2012) holds that private and transnational orders, which no external authority is positioned to govern, may nonetheless be constrained by inducing them to develop internal limits of their own, so that the system installs procedures by which it restrains itself and remains open to the claims of those it affects. Constitutionalization on this account is something a social order can undergo without a state to impose it.

The strategy is the most directly addressed to the situation this paper is concerned with, since it takes as its starting point the absence of an external authority. Its difficulty is entered in the next section.

14 The Difficulties of the Strategies

Section 13 set out five families of constraint and assessed none of them. This section takes each in turn, in the order there established. The difficulties are of different kinds, and they share a form which the closing subsection states.

14.1 The Underdetermination of Text

Text underdetermines application, which §8 established and need not be repeated.

The limiting case requires separate treatment, since its difficulty is of a different kind. Complete specification does purchase determinacy at the point of decision, and it purchases it by relocating the interpretive act to the point of specification. Someone determined that these cases fall under the rule and those do not, and encoded the determination. The act that was performed openly by an organ deciding a case is performed in advance by whoever writes the specification, ordinarily without a case before them, ordinarily without any party present, and ordinarily without the result being legible as an interpretation at all. The consequence is the one identified in §4 as the divergence of formal and effective authority, in its most complete form: the interpretive power has moved to a position that the rules do not name, that no party can address, and whose exercise presents itself as a technical implementation. Determinacy at the point of application is thereby real, and the interpretive question has been concealed and not answered.

14.2 The Regress of Purpose

Purpose is itself an object of interpretation, so the strategy regresses. Hart & Sacks (1994) directs the interpreter to attribute a purpose that reasonable persons would have held, and the attribution is performed by the interpreter from materials the interpreter selects. Where

the purpose is stated in the instrument the regress is shortened and does not terminate, since a stated purpose is expressed in terms whose application requires determination.

14.3 The Formality of Procedure

Procedure secures the form of a determination and leaves its content formally untouched. This is a limitation by design and not a defect, since a procedural constraint that dictated outcomes would have ceased to be procedural.

Two consequences follow that bear on this paper. Luhmann (1969) establishes that procedural elaboration produces acceptance by a mechanism independent of the correctness of what is decided, and Tyler (1990) supplies the empirical form of the same finding. An organization may therefore increase procedural quality, increase the acceptance of its determinations, and leave its interpretive practice exactly where it was. And the recursive feature identified in §3 bears with particular force on this family, since procedural constraints are themselves rules of the organization, and their scope, their applicability, and the consequences of their breach are determined by the body they constrain.

14.4 The Reach of Community

Constraint by community fails in a manner that is easy to miss, because the failure is compatible with the strategy operating perfectly.

A community of competent practitioners disciplines an interpreter with respect to other members of that community. The reading an interpreter must be able to defend is a reading defensible to peers. Where the affected party is a member of the community, this is a substantial protection. Where the affected party stands outside it, the strategy supplies nothing to them directly, and it supplies nothing at all in the case that matters most: a community may converge upon a reading that operates harshly against those outside it, the convergence being precisely what the strategy calls constraint working. Uniformity among interpreters is what the family delivers, and uniformity is consistent with any content.

This is the point at which the present account parts from the family it most resembles. Both locate normative weight in a relation. The constraint-by-community strategy locates it in the relation among interpreters, and the criterion of §25 locates it in the relation between the interpreter and the party interpreted upon. The first asks whether a reading could be defended to those competent to assess it. The second asks whether the reading leaves the affected party positioned to raise the question again. A practice may satisfy the first completely while failing the second completely, and §23 identifies the institutional form of that combination under the heading of constituency alignment.

14.5 The Precondition of Reflexivity

Reflexive constraint presupposes that a system possesses the capacity to install limits upon itself and stands in an environment that presses it to do so. Where the environment presses, the strategy describes something real and observable. Where it does not, the strategy states a possibility and identifies nothing that would bring it about. The presupposition is the stake of §23 arriving in systems-theoretic vocabulary, and the strategy most directly addressed to the absence of external authority turns out to require an environment performing the office that the absent authority would have performed.

14.6 The Common Residue

The difficulties may be set out together.

Strategy	*Source of discipline*	*Presupposes*	*Characteristic failure*
Text	The words as used	Shared and stable usage	Underdetermines; complete specification relocates the act to the encoder
Purpose	The end served	Recoverable and determinate ends	Purpose is itself interpreted
Procedure	The manner of proceeding	That form tracks substance	Secures acceptance without correctness
Community	Peers competent to assess	Membership and shared standards	Uniform among members, silent toward outsiders
Reflexivity	The system's self-limitation	An environment that presses	Requires the stake whose absence defines the problem

Each strategy presupposes something it cannot itself secure, and the presupposition is in each case a condition of the setting and not a feature of the strategy. This is the theoretical counterpart of the result reached institutionally in §23, and the coincidence of the two is worth stating plainly: the strategies fail where the devices fail, and they fail for the same reason. What disciplines an interpreter is, in every family, something outside the interpreter that the interpreter answers to, and the cases of concern to this paper are those in which nothing outside the interpreter is positioned to be answered to.

The sections that follow turn from strategies to instruments, and ask whether the devices institutions have actually built perform better than the strategies they draw upon.

15 Interpretive Control in Legislation

The four sections beginning here survey what institutions have built in answer to the fourth question. They proceed by scale, and this one treats the scale at which interpretation is anticipated before any case has arisen. The devices are accordingly prospective: they operate upon the rule and upon the conditions of its later reading, and none of them operates upon a determination once made.

15.1 Interpretation Statutes

Several jurisdictions maintain a statute governing the reading of all other statutes. The United Kingdom's Interpretation Act 1978 is the compact form, supplying standard definitions, default rules on number and gender, and provisions on commencement and repeal. Canada's Interpretation Act directs that every enactment be deemed remedial and be given the fair, large, and liberal construction that best ensures the attainment of its objects. Australia's Acts Interpretation Act 1901 requires in section 15AA the interpretation that would best achieve the purpose or object of the Act, and permits in section 15AB recourse to extrinsic material to confirm or to determine meaning. New Zealand's Legislation Act 2019 directs that meaning be ascertained from the text in the light of purpose and context. Singapore's Interpretation Act contains a comparable purposive provision.

The genre deserves notice for a reason that the doctrinal literature does not always make explicit. Section 9 treated the ordering of the modes as a matter on which doctrines disagree and no meta-rule adjudicates. These statutes settle the question by legislation. A purposive mandate is a legislative choice among the orderings surveyed in §9, imposed on all subsequent interpreters and removed from their discretion. Whether the imposition succeeds is a separate matter, since the mandate is itself a rule whose application requires the determination of a purpose, which is the regress of §14. What is established is that the ordering question is answerable by authority even where it is not answerable by argument.

15.2 Definition and Purpose Clauses

Two drafting devices operate directly on the material §6 classified.

A definition clause converts a term from one class to another. A standard term whose application requires evaluation on every occasion may be given an exhaustive definition and thereby become classificatory, and a classificatory term may be given an enumerated extension and become determinate. The interpretive load of the rule falls accordingly. The device has a cost that §6 entered: the latitude the undefined term preserved is surrendered, and bodies that value the latitude have reason to define at a level of generality that retains it.

A purpose clause supplies the material that the purposive mode requires and that §5 found ordinarily absent outside legal systems. Its presence converts an unavailable mode into an

available one. Its limitation is that a stated purpose is expressed in terms whose own application requires determination, so the device shortens the regress and does not terminate it.

Taken together, the two devices are infrastructure-building in the sense identified in §9: they supply the materials on which the more constraining orderings depend, and they are the clearest instance in this survey of a body improving its own interpretive discipline by making the modes available.

15.3 Control of Delegated Interpretation

Where a legislature confers on another body the power to elaborate its rules, it confers a portion of the interpretive function, and the devices controlling the conferral are controls upon interpretation.

The Treaty on the Functioning of the European Union distinguishes in Articles 290 and 291 between acts that supplement or amend non-essential elements of a legislative act and acts that establish uniform conditions for its implementation, and reserves essential elements to the legislative act itself. The reservation is of interest here because it identifies a class of interpretive questions that may not be delegated at all, which is a control of a kind no other scale in this survey supplies.

The United Kingdom's practice of conferring power to amend primary legislation by subordinate instrument, known by the name of the Tudor statute from which the practice takes its label, is the opposite case, and the sustained criticism of it concerns exactly the transfer of interpretive and legislative power to a body operating with less scrutiny.

In the United States the doctrine restricting delegation requires that Congress supply an intelligible principle to guide the delegate. The doctrine has been enforced rarely for many decades and has been the subject of renewed argument in recent years, and its current condition should be verified before it is relied upon, in line with the caution entered in §2.

15.4 Authentic Texts in More Than One Language

The European Union adopts its legislation in all official languages, each version being equally authentic, and the Court of Justice accordingly compares versions where they diverge and resolves the divergence by reference to the purpose and general scheme of the measure. In *CILFIT* the Court set out the conditions under which a national court may treat the correct application of Union law as so obvious that no reference is required, and in doing so recorded the multilingual character of the legislation and the comparison of versions among the considerations bearing on interpretation.

This arrangement is worth a paragraph of its own because it is an institutional demonstration of a proposition that §8 argued philosophically. Where one text exists, the claim that the text underdetermines its application can be resisted by asserting that a competent reader sim-

ply sees what the words mean. Where several texts are equally authentic and they diverge, the insufficiency of text is on the face of the record, and the system is compelled to adopt an ordering that places purpose and scheme above the words of any single version. Multilingualism converts a contested philosophical thesis into an operational necessity.

15.5 Temporal Devices

A last family operates on the duration of a rule and of the readings it attracts. Sunset provisions terminate a measure at a fixed date unless it is renewed. Review clauses require that a measure be examined after a stated interval. Post-legislative scrutiny, conducted by committee in several parliamentary systems, examines how a measure has operated in practice.

These devices deserve emphasis disproportionate to the attention they ordinarily receive, because they are the closest thing this survey encounters at any scale to a device addressed to the concern of §25. A sunset provision compels a question to be asked again. A review clause compels the operation of a rule, which is to say the accumulated body of readings given to it, to be examined by a body other than the one applying it. Neither device was designed for the protection of a party against an interpretation, and both have the effect of preventing a settled reading from passing beyond examination, which is the condition the criterion of §25 requires.

15.6 Findings and Residue

Legislative devices supply prospective control of considerable power. The ordering of the modes may be settled by statute. The interpretive load of a term may be reduced by definition. The materials that more constraining modes require may be created by drafting. Classes of question may be reserved against delegation. And the periodic reopening of settled readings may be compelled by temporal provision.

What the scale leaves is uniform across every device surveyed here, and stating it is the point of the section. Each device operates upon the rule, upon the drafter, or upon a delegate, and none operates upon a determination once it has been made. None supplies anything to a party against whom a reading has been applied. None is triggered by a complaint, none is available at the instance of an affected person, and none requires that any determination be revisited because a party has objected to it. The devices of this scale are entirely on the side of the body that makes the rules, and the affected party has no place in any of them.

16 Interpretive Control in Standard-Setting

This scale comprises bodies that write rules without legislative authority and whose rules bind through the conditions others attach to dealing. A standard is adopted voluntarily and becomes practically obligatory where a purchaser, a lender, an insurer, a regulator, or a procurement rule requires conformity with it. The interpretive question here is compounded, since

a party subject to a standard faces determinations about what the standard requires made by a body that did not write it, applying a text written by a body over which the party has no influence.

The instruments surveyed below are the most developed answers this survey encounters to the fourth question, and the section closes by identifying what they do not do.

16.1 Standards Governing the Writing of Standards

A first family regulates the process by which standards are made.

Annex 3 to the World Trade Organization's Agreement on Technical Barriers to Trade sets out a code of good practice for the preparation, adoption, and application of standards, addressed to standardizing bodies and concerned with transparency, non-discrimination, and the avoidance of unnecessary obstacles to trade. The ISO/IEC Directives govern the procedure of the international standards bodies themselves, and require the development of standards by consensus among participating members. The ISEAL Codes of Good Practice occupy the same position for sustainability standards, specifying requirements for standard-setting, for assurance, and for the measurement of impact, and functioning as a standard whose subjects are standard-setters.

This family deserves notice because it is unusual. It consists of rules addressed to the rule-making of private bodies, imposed by no sovereign, and taken up because bodies which fail to observe them lose credibility among those whose recognition they require. It is the clearest existing instance of the reflexive strategy of §13, and the condition of its operation is exactly the stake identified in §23.

16.2 Standards Requiring Internal Grievance Mechanisms

A second family requires the organizations to which it applies to establish channels through which those affected by their conduct may raise complaints. This family is the most directly relevant of any instrument in this survey to the question of §25, since it specifies in normative terms what an internal mechanism must be like.

The United Nations Guiding Principles on Business and Human Rights (United Nations, 2011) state in Principle 31 the criteria by which the effectiveness of a non-judicial grievance mechanism is to be assessed. Such a mechanism should be legitimate, in the sense of enabling trust from the stakeholder groups for whose use it is intended and being accountable for the fair conduct of grievance processes. It should be accessible, being known to those it is intended to serve and providing assistance to those who face barriers to access. It should be predictable, providing a clear and known procedure with an indicative timeframe and clarity on the types of process and outcome available and the means of monitoring implementation. It should be equitable, seeking to ensure that aggrieved parties have reasonable access to sources of infor-

mation, advice, and expertise necessary to engage in a grievance process on fair, informed, and respectful terms. It should be transparent, keeping parties informed about progress and providing sufficient information about performance to build confidence in its effectiveness. It should be rights-compatible, ensuring that outcomes and remedies accord with internationally recognized human rights. It should be a source of continuous learning, drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances. And an operational-level mechanism should be based on engagement and dialogue, consulting the stakeholder groups for whose use it is intended on its design and performance and focusing on dialogue as the means to address and resolve grievances.

The criterion of equitability is worth isolating. It requires that a party have access to the information, advice, and expertise needed to engage on informed terms, which is a direct address to the informational asymmetry entered in §3 and, at least in form, to the difficulty identified in §6 concerning determinations under comparative terms.

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD, 2023) supply a companion arrangement in which adhering states maintain National Contact Points that receive specific instances raised against enterprises and offer good offices toward their resolution. The IFC Performance Standards require a grievance mechanism for affected communities as a condition of finance, and the Equator Principles carry the requirement into commercial project lending. ISO 10002 gives guidance on complaints handling within an organization and ISO 10003 on dispute resolution external to it.

16.3 Standards Governing Governance and Compliance

A third family addresses the internal ordering of the organization itself. ISO 37000 provides guidance on the governance of organizations. ISO 37301 specifies requirements for a compliance management system and is drafted for certification. ISO 37001 addresses anti-bribery management systems. ISO 26000 offers guidance on social responsibility and is expressly not intended for certification.

The relevance of this family to interpretation is indirect and real. A compliance management system requires that obligations be identified, that responsibilities be allocated, that determinations be documented, and that non-conformities be recorded and addressed. Its effect where implemented is to build the record that §5 found the precedential and systemic modes to require, and §9 identified as the infrastructure on which the more constraining orderings depend.

16.4 Conformity Assessment and Accreditation

Standards bind through the machinery that certifies conformity with them, and that machinery is itself standardized. ISO/IEC 17021-1 states requirements for bodies providing audit

and certification of management systems, and ISO/IEC 17065 for bodies certifying products, processes, and services. ISO/IEC 17011 states requirements for the accreditation bodies that assess the certifiers. Mutual recognition among accreditation bodies is organized through the International Accreditation Forum and the International Laboratory Accreditation Cooperation, so that a certificate issued under one national accreditation is recognized under others.

Two features of this machinery bear on the present subject.

The requirements for certification bodies include documented processes for appeals against certification decisions and for complaints, so a party dissatisfied with a certifier's determination has a specified channel. The interpretive-control device is thus applied recursively to the bodies that administer it, which is an arrangement no other scale in this survey exhibits.

And the object of assessment is the conformity of a management system. An auditor examines whether the organization has established the required processes, whether it follows them, and whether it records what it does. The examination does not extend to whether any particular determination the organization made was correct, and it is not designed to.

16.5 Findings and Residue

The instruments surveyed in this section are the only family in the survey requiring organizations to establish channels by which their own determinations may be contested from within, and that specifies in normative detail what such a channel must be like. Anyone seeking an existing statement of what an internal mechanism for interpretive contest ought to look like will find it in Principle 31 and in the assurance requirements that accompany the certification standards. To that extent the scale answers the fourth question more directly than any other surveyed here.

Five limits attach, and they are cumulative.

Adoption is voluntary. No instrument in this section obliges any organization to submit to it, and an organization that declines is subject to nothing. The instruments operate on organizations that have chosen to be bound, and the choice is ordinarily made because somebody whose recognition the organization requires has conditioned dealing upon it.

The criteria are themselves standard terms. Whether a mechanism is predictable, equitable, or accessible is a question requiring evaluation on every occasion of use, and it is answered by an auditor applying the criteria to a case. The interpretive question is thereby relocated to the assessment of the mechanism and is not dissolved by it, which is the pattern §6 identified for published criteria generally.

Assessment addresses the system and not the determination. This limit is the most serious and it is structural. A certified organization has demonstrated that it operates a conforming process. Nothing in the assessment establishes that a determination reached through that process was correct, and an organization may hold current certification while any particular interpretation it has made stands uncorrected. The apparatus is procedural in the sense of §14,

and inherits that family's characteristic failure in full.

The instruments bite through a stake. Certification is valuable because a buyer, a lender, a procurement rule, or a regulator requires it, and where none does, the mark is worth what it costs to obtain and nothing more. This is the presupposition identified in §23, and it is present here in its purest form, since the entire apparatus is built upon it and makes no pretence otherwise.

And the standard-setter's composition matters. Bodies that write standards for an industry are ordinarily populated in substantial part by that industry, since the expertise required to draft resides there. The consequence, treated in §23 under the heading of constituency alignment, is that the standard and the practice it governs are written by parties with a common interest in the practices they share, and a determination made in accordance with the shared practice is unlikely to be classified as a failure by the body that certifies against the standard.

17 Administrative Review and the Duty to Give Reasons

This scale is the most developed in the survey. Public administration decides high volumes of individual cases under general rules, the decisions bear directly on those subject to them, and legal systems have built over a century an apparatus addressed to the resulting problem. The instruments are grouped here by function. The comparative question of how far each system permits review to reach the substance of an evaluative determination is held for §18.

17.1 The Duty to Give Reasons

The most widespread instrument requires that a decision be accompanied by a statement of the grounds on which it was reached.

German administrative procedure law requires that a written administrative act state its reasons, including the essential factual and legal grounds on which the authority proceeded, and adds a provision of particular interest here: where the act rests on an exercise of discretion, the statement should also indicate the considerations from which the authority proceeded in exercising it. This is the closest any instrument in the survey comes to requiring the exhibition that §5 identified as the test of a bounded reading, since it obliges the authority to expose the route and not the conclusion alone.

French law has required since 1979 that individual administrative decisions of specified adverse classes be accompanied by reasons stating the considerations of law and of fact on which they rest, a requirement now carried in the code governing relations between the public and the administration.

In Union law the duty to state reasons for acts of the institutions is imposed by the Treaty, and the Charter of Fundamental Rights includes among the components of the right to good administration the obligation of the administration to give reasons for its decisions, alongside

the right to be heard and the right of access to one's file. The Charter also guarantees an effective remedy before a tribunal.

In the United States the requirement operates through the standard of review. An agency action may be set aside as arbitrary and capricious, and the reasoned-explanation requirement developed under that standard obliges the agency to articulate a satisfactory explanation including a rational connection between the facts found and the choice made.

The United Kingdom has no general common law duty to give reasons for administrative decisions, and the categories in which a duty has been recognized have expanded considerably, particularly where a decision affects an important interest or appears aberrant without explanation.

The significance of this family for the present subject was stated in §5 and is repeated here because the survey confirms it. A reading is assessable as bounded when the interpreter exhibits what was drawn upon. Reason-giving duties are the institutional form of that requirement, and their strength varies with how much of the route they compel into the record. A duty satisfied by a statement of the conclusion and the provision applied leaves the interpretive act exactly as unexaminable as it was.

17.2 Criteria Published in Advance

A second family requires the administration to state, before any case arises, the criteria by which it will assess cases of a kind. The device converts a portion of prospective interpretive activity into published rules, and it is developed with unusual explicitness in Japanese administrative law.

Japan's Administrative Procedure Act requires an agency to establish criteria for the examination of applications and to make them public, and separately provides for criteria governing adverse dispositions, in terms that oblige the agency to endeavour to establish and publish them. The distinction between the mandatory and the endeavour formulations is worth marking, since it locates precisely where the legislature was willing to constrain and where it retreated. The Act also requires that reasons be shown when an application is refused and when an adverse disposition is made.

The device is the institutional realization of what §6 treated as the partial remedy of published criteria, and both limits noted there apply. The criteria are composed of terms whose application requires determination, so the interpretive question moves and does not disappear. And the agency retains the drafting choice of how specific to be, so the latitude that the undefined term preserved may be preserved again at one remove.

17.3 Procedural Due Process

A third family attaches procedural entitlements to determinations affecting protected interests. In the United States these are constitutional in source. The requirement of a hearing before termination of certain benefits was established in *Goldberg v. Kelly*, and the process due in a given case is determined by the balancing enquiry of *Mathews v. Eldridge*, which weighs the private interest affected, the risk of erroneous deprivation under the existing procedures together with the probable value of additional safeguards, and the governmental interest including administrative burden (Mashaw, 1985).

The family regulates the path to a determination. It secures notice, an opportunity to respond, and in some settings an impartial decider, and it addresses the content of the determination only through the risk-of-error factor in the balancing enquiry, which asks whether additional procedure would reduce error and does not ask whether this determination was in error.

17.4 Internal Review Before Adjudication

A fourth family interposes a tier between the initial determination and any court.

Japan's system of administrative complaint review was substantially revised in the last decade to introduce a hearing officer who has not been involved in the original disposition and a third-party review body whose opinion is sought before the decision on the complaint is made. Both changes address the difficulty identified in §3 as recursive, since they interpose persons who did not make the determination under challenge. Comparable internal tiers exist in Korean administrative procedure and in the internal review stages of many administrative schemes in common law jurisdictions.

The interposition of a person not previously involved is the most direct institutional response in this survey to the recursion of §3. It is also a partial one, since the reviewing person or body remains within the same organization, applies the same rules, and is ordinarily subject to the same interpretive practice and the same guidance.

17.5 Ombudsman Institutions

A fifth family investigates complaints against administration without deciding legal rights. The European Ombudsman receives complaints of maladministration in the institutions of the Union, and national ombudsman offices perform comparable functions.

Two features are relevant here. The jurisdiction is defined by maladministration, which is broader than illegality and reaches quality of administration, delay, discourtesy, and failure to follow one's own procedures. And the outcome is a recommendation without binding force.

The combination is worth naming, because it is a trade the other families do not make. The ombudsman can reach conduct that no court would review, including much that concerns how

an authority handled a matter, and can do so precisely because nothing turns legally on the finding. Breadth of jurisdiction is purchased with absence of compulsion.

17.6 Findings and Residue

The public administrative scale supplies more than any other surveyed. Determinations must ordinarily be reasoned, and in one system the reasons must expose the considerations bearing on an exercise of discretion. Criteria may be required to be settled and published in advance. Procedural entitlements attach where protected interests are affected. An internal tier staffed by persons not previously involved may be interposed before any court is reached. And an office of broad jurisdiction may examine the quality of administration without any legal right being at stake.

Three limits are entered here and a fourth is held for the next section.

The apparatus is addressed to public bodies. Its instruments follow from the character of public power, and they do not apply to the private and transnational bodies that make many of the determinations with which this paper is concerned. A party dealing with a private organization ordinarily has none of this.

The reason-giving duties are qualified in every system by exceptions, by classes of decision to which they do not extend, and by the sufficiency standards applied to the statements given. A duty discharged by formulaic recitation supplies nothing to the assessment of boundedness.

The internal tier remains internal. Interposing a person not previously involved reduces the recursion identified in §3 and does not remove it, since the reviewer is subject to the organization's own interpretive practice and to the guidance that shaped the original determination.

And the fourth limit is the one that governs the whole scale. However well developed the apparatus, its reach into a determination depends on how much of the interpretive act the reviewing forum is willing to examine, and every system surveyed reserves some part of the evaluative judgment to the deciding body. What each system reserves, and how far the reservation extends, is the subject of §18.

18 Regional Variation in Deference and Academic Judgment

The apparatus surveyed in §17 reaches a determination only so far as the reviewing forum is willing to look. This section compares how far, across several systems, and takes as its running example the class of determinations in which the reservation is most complete. Academic judgment is chosen because every system surveyed reserves it in some measure, because the reservation is defended on grounds that are respectable, and because the class exhibits in a pure form the features that §6 identified as concentrating interpretive load.

18.1 Review of Interpretation as a Question of Law

Systems differ at the threshold on whether the interpretation of a rule's terms is a matter on which a reviewing forum forms its own view.

German administrative law gives the strongest affirmative answer. The indeterminate legal concepts in which statutes are written are treated as questions of law, and a court reviewing an administrative act determines their meaning for itself, without deference to the authority's reading. A margin of appreciation on the side of the statutory element is recognized only in limited and enumerated categories, among them examination assessments, appraisals of civil servants, decisions of pluralistically composed expert bodies, and certain prognostic judgments. Discretion in the German sense attaches to the legal consequence and not to the meaning of the statutory terms, and it is reviewed for excess, for abuse, and for failure to exercise.

The United States has recently moved in the same direction by a different route. The doctrine requiring courts to defer to a permissible agency construction of an ambiguous statute was overruled in 2024, and reviewing courts now exercise independent judgment on whether an agency has acted within its statutory authority, with an agency's contemporaneous and consistent reading carrying such persuasive weight as its reasoning merits. Deference to an agency's reading of its own regulations survives in narrowed form, subject to conditions established in 2019.

French administrative law distinguishes intensity of review by subject matter, applying a normal control to some determinations and a restricted control to others, under which only a manifest error of assessment will be censured. The United Kingdom's general standard of unreasonableness sets a high threshold for intervention in evaluative judgments, with proportionality applying where rights are engaged.

18.2 The Reservation of Academic Judgment

Against that variation, the treatment of academic assessment is more uniform, and the differences among systems concern the threshold at which the reservation yields.

In the United States the courts have held that a genuinely academic decision may not be overridden unless it constitutes such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment. Procedural protections in academic dismissals are correspondingly lighter than in disciplinary ones, on the ground that academic evaluation is not adapted to the procedural tools of the adversarial process.

In the United Kingdom a student may complain to the Office of the Independent Adjudicator for Higher Education, established under statute, and that office does not consider matters of academic judgment. The courts have likewise treated issues of academic judgment as un-

suited to determination by a court while accepting that matters of contract and procedure may be justiciable.

In France the sovereignty of the examining jury is a settled principle, and administrative courts examine the composition of the jury, the regularity of the procedure, and manifest error, while declining to substitute an assessment of merit.

Germany is the exception on which §23 already relied. The Federal Constitutional Court held in 1991 that an examinee's answer which is defensible and cogently reasoned may not be marked as wrong, and thereby constrained the latitude of examiners over the substance of assessment. The route was constitutional, the occupational consequences of the examinations in question were substantial, and the effect was to convert a portion of what other systems reserve into a matter on which a reviewing body forms its own view.

Japan supplies the strongest reservation, and by an explicit doctrine. The Supreme Court has held that certain internal determinations of a university belong to the internal affairs of a partial society within the general legal order, and are for that reason outside the scope of judicial review, unless they bear upon a person's status in general civic legal relations. The doctrine is of direct interest to this paper, since it states in judicial terms exactly the proposition that §23 arrives at institutionally: that an organization's internal determinations may lie beyond the reach of external adjudication as a matter of principle and not merely of practice.

18.3 The Comparison Summarized

System	*Interpretation of rule terms*	*Academic assessment*	*Threshold for intervention*
Germany	Question of law, court forms own view	Margin recognized, constitutionally constrained	Defensible answer may not be marked wrong
United States	Independent judicial judgment since 2024	Reserved to professional judgment	Substantial departure from accepted academic norms
France	Intensity varies by subject matter	Sovereignty of the jury	Manifest error of assessment
United Kingdom	Deferential on evaluative questions	Excluded from the statutory adjudicator	High threshold of unreasonableness
Japan	Reviewable in general administrative law	Internal affairs of a partial society	Effect on general civic status

18.4 Findings of the Comparison

Three findings follow, and the third is the one the paper carries forward.

Every system surveyed reserves some portion of substantive evaluative judgment to the deciding body. The reservation is not an accident of any legal culture and is defended everywhere on the same two grounds: that the reviewing forum lacks the competence to redo the

assessment, and that the deciding body's autonomy in matters of its own expertise is a value in itself. Both grounds are sound, and this paper does not dispute either.

The systems differ substantially in the threshold at which the reservation yields, and the variation is wide enough to establish that the reservation's extent is a choice and not a necessity. Germany's constitutional constraint on examiners and Japan's partial-society doctrine mark the ends of the range, and both are settled law in developed systems. An institution that treats the extent of its own reservation as given is treating a policy as a fact.

The systems also differ in how much of the interpretive act is forced into the reviewable record, and this dimension is separable from the first. A system may reserve the substance of an assessment while requiring that the criteria be published, that the reasons expose the considerations relied upon, and that the assessment be conducted by persons not previously involved. The material of §17 showed each of these varying independently of the standard of review. This matters for the criterion of §25, because what that criterion requires is that a question remain askable, and a question is askable to the extent that what was determined, and on what grounds, is on a record somebody can address. A reservation of substance combined with a full record leaves a question open. A reservation of substance combined with a bare conclusion closes it.

18.5 The Limit of the Comparison

One caution attends the whole section. The doctrines compared here are the formal positions of legal systems, and this survey is doctrinal in the sense entered in §2. How often the available routes are used, by whom, at what cost, and with what result are empirical questions on which the comparative literature is thin. A system whose doctrine permits searching review and whose procedures make review practically inaccessible resembles, from the position of an affected party, a system that reserves the question entirely.

23 The Asymmetry Boundary

This section discharges the fourth question and states the result toward which the survey of practice is directed. The result is a boundary condition on the whole apparatus assembled in answer to that question. Every device examined in the preceding sections operates upon a stake the interpreting body holds in recognition by some party outside itself, and every device loses its purchase as that stake declines. Where the authority to interpret and independence from recognition are held together, the devices do not reach.

23.1 The Common Presupposition

The devices surveyed fall into six families, and each may be characterized by what it operates upon.

Compulsory review attaches a cost to a defective interpretation by exposing the decision to annulment. It presupposes a forum with jurisdiction over the body, and it presupposes that annulment costs the body something it values. *Conformity assessment*, comprising certification, accreditation, and the standards that govern them, attaches a cost by withholding a mark that buyers, procurers, insurers, or regulators require. It presupposes a party who conditions dealing upon the mark. *Reputational devices*, comprising disclosure, publication, ranking, and reporting, attach a cost by informing an audience whose regard the body needs. *Professional devices* attach a cost by imperilling standing within a community of peers whose recognition the body's officers require in order to practise. *Exit*, in Hirschman (1970)'s sense, attaches a cost by withdrawal of participation from a body that depends on participants. *Contractual devices*, comprising grievance clauses, arbitration agreements, and negotiated procedures, attach a cost by rendering an obligation enforceable, and they presuppose a forum, a bargain, and a counterparty with the standing to have struck it.

The families differ in the currency of the cost and agree in their form. Each supplies the interpreting body with a reason to interpret well, by attaching a cost to interpreting badly, and each transmits that cost through a party whose recognition the body requires. Call that party the device's *constituency*. The efficacy of a device is a function of three conditions, all of which must hold: the constituency must be able to observe the interpretive act, the constituency's withdrawal of recognition must impose a cost on the body, and the officers who perform interpretive acts must internalize some part of that cost.

23.2 Mediation by a Third Party

A feature of this structure deserves to be marked, since it explains why protection can fail while every device is functioning as designed.

The constituency is ordinarily somebody other than the party against whom the interpretation was exercised. The affected party is an applicant, a member, a supplier, a complainant, or a candidate. The constituency is a court, a certifying body, a purchaser, a professional association, a funder, or a public audience. Protection of the affected party is therefore *mediated*: it arises when the affected party's grievance is legible to the constituency, and when the constituency treats that grievance as a reason to withdraw recognition. Neither condition is guaranteed by the existence of the device.

Two consequences follow. The affected party's protection varies with the interest the constituency takes in cases of that kind, and that interest is distributed unevenly across grievances for reasons unconnected with their merit. And an organization may satisfy every device in the six families, holding its certifications, surviving its reviews, and retaining the regard of its audience, while a particular interpretation goes uncorrected, because no constituency has any occasion to register that particular case. The devices are not thereby defective. They were built to discipline patterns, and a single interpretive act is not a pattern.

23.3 Conditions Under Which the Stake Vanishes

The stake on which the devices operate approaches zero under conditions that are structural and jointly common.

The first is *surplus*. Where the number of parties seeking what the organization allocates exceeds what it can allocate, the loss of any one party costs the organization nothing, and the exit device has no currency. An institution admitting a fraction of its applicants is in this position with respect to every applicant it declines.

The second is *singularity of supply*. Where the organization is the sole or near-sole source of what the party seeks, whether a qualification, a licence, a certification, or a position, exit is unavailable to the party in the first place, and the threat that would operate the device cannot be formed.

The third is *the asymmetry of repetition*, in Galanter (1974)'s terms. The organization is a repeat player, holding the interpretive practice, the record of prior determinations, the relationships with the reviewing forums, and the capacity to structure cases so as to protect the practice. The affected party is a one-shot player, holding a single case, no record, and no prospect of a further interaction in which recognition might be withheld.

The fourth is *non-observability*. Where determinations are individualized, unpublished, or confidential, the constituency cannot observe the interpretive act, and the first condition of efficacy fails at the outset. Individualized decision is the ordinary form of the interpretive moment, so this condition is common.

The fifth is *substitutability of reasons*. Where a challenged interpretation can be replaced by a ground the reviewing forum will not examine, observation by the constituency does not yield a classification. A determination that a background lacked relevance, challenged, may be succeeded by a determination that the field was strong and the places few. The second ground states a comparative evaluative judgment, which is the class of judgment every reviewing forum surveyed reserves to the deciding body.

The sixth is *constituency alignment*. Where the constituency is composed of bodies of the same kind as the one under discipline, as with a standard-setter populated by those it standardizes, or a professional body composed of the profession, the constituency's interest and the body's interest coincide over the interpretive practices they share, and withdrawal of recognition is not a live possibility for that class of case.

The conditions are independent, and the case of concern to this paper displays several together. A body that allocates a scarce good, holds a near-monopoly on the qualification it confers, faces one-shot parties, decides individually and without publication, may state a comparative ground upon challenge, and answers to a constituency of its own peers, holds no stake upon which any device in the six families can operate.

23.4 The Boundary Stated

The result may be stated.

> **The asymmetry boundary.** *Every device developed for the protection of a party against interpretive injustice operates upon a stake the interpreting body holds in recognition by a constituency outside itself. The efficacy of such a device is bounded above by the magnitude of that stake and by the legibility of the interpretive act to that constituency. Where the authority to interpret and independence from recognition are held by the same party, the interpretive act lies beyond the reach of the assembled apparatus, and no addition to the apparatus of the same kind alters the position.*

Three qualifications belong with the statement, and each restricts it.

The claim concerns devices of the six families and not the concept of protection as such. It asserts an upper bound on a class of instruments and does not assert that a party is without recourse in every case falling within the conditions of the preceding subsection, since conditions may be present in degree.

The claim carries no criticism of any instrument. The devices are well constructed for their range, and their range is the domain in which the interpreting body depends upon others. Most organizations, most of the time, occupy that domain. The boundary marks where the domain ends, and the instruments are not at fault for ending with it.

The claim is structural, so it is not remedied by better implementation. A more rigorous certification scheme, a more searching review, or a more transparent report each raises efficacy within the domain and none of them extends the domain, since each continues to operate upon the same stake.

23.5 Cases Against the Boundary

Two classes of instrument appear to escape the structure, and both should be examined, since the second yields a genuine partial exception.

The first is protection by a specified impermissible ground, of which anti-discrimination law is the developed instance. Such regimes attach a cost to a decision regardless of the deciding body's dependence upon anyone, and they meet the substitutability of reasons directly, by shifting the evidentiary burden to the decision-maker once a prima facie case is shown. The apparent escape is real within its scope and the scope is narrow in the way that matters here. The regimes operate where the impermissible ground is specified in advance and the complaint can be brought under it. A complaint that an interpretation was poorly made, with no protected characteristic in play, falls outside them entirely, and the burden-shifting device has nothing to shift.

The second is constitutional adjudication, and it supplies the strongest case against the boundary. The German Federal Constitutional Court's examination decisions of 1991 reached into a domain that reviewing forums had treated as reserved, holding that an examinee's defensible answer may not be counted as wrong, and thereby constraining the latitude of examiners over precisely the substantive evaluative judgment that deference doctrines protect. This is penetration of the interpretive act itself, achieved without any dependence of the examining body upon the examinee.

The exception should be conceded and then measured. Its conditions were demanding: a constitutional right of the affected party was engaged, the evaluative act was of a standardized and recurring kind admitting of articulable criteria, a forum of constitutional rank was available, and the whole was situated in a public system of examination. Where a right of that rank is not engaged, where the evaluative act is comparative and individualized, or where the body is private or transnational, none of the conditions obtains. The exception establishes that the boundary is a feature of the ordinary institutional landscape and is not a logical necessity, and it establishes the price of crossing it, which is a constitutional right, a reviewable criterion, and a forum of sufficient rank.

23.6 The Position Reached

Two routes remain open, and the paper takes the second while recording that the first is the practical one.

The first route alters the asymmetry. If protection depends upon the existence of a constituency whose recognition the body requires, then protection may be pursued by constituting one: by aggregating one-shot parties into a body with a standing interest, by attaching the interpretive practice to a condition of funding or accreditation held by a party the organization does depend upon, or by rendering determinations observable so that a constituency which exists may see what it presently cannot. Each of these is available, each is a form of collective action or of institutional design, and none is addressed by this paper, whose subject is what may be said about an interpretive act and not how a constituency may be assembled. The route is named here so that the turn taken next is not mistaken for a claim that nothing practical remains.

The second route asks what an interpretation does, given that no party may be positioned to sanction it. It sets aside the question of who administers a cost, and asks after the effect of the interpretive act upon the relation within which it was performed. This is the question the generative relational sections take up, and the boundary established here is what makes the question worth asking, since it establishes that the alternative question, of who will impose a cost, has an answer only within a domain the cases of greatest concern lie outside.

24 Interpretation as a Generative Relational Act

The boundary established in §23 closes one line of inquiry and opens another. If the question is who will impose a cost upon a body that interprets badly, the answer is available only within a domain that the cases of greatest concern lie outside. This section poses a different question about the same act, and the following section states the criterion that answers it.

24.1 The Shift of Object

Three questions have been asked of an interpretation in the foregoing sections. Was it admissible, which asks whether it fell within the space the rule's terms permit. Was it fairly reached, which asks after the procedure. Did it harm, which asks after the party's position afterwards. Each is a real question and each has been treated at length.

The question posed here concerns the relation within which the act occurred. An interpretive act is performed by one party upon a question that arose between two, and it leaves that relation in some condition. The condition of interest is the relation's capacity to produce a further interpretation of the same question. An act may leave that capacity intact, may narrow it, and may extinguish it, and the three outcomes are the object of assessment.

The shift is worth stating carefully, since it is easily mistaken for one of the three questions already asked. It is not the question of admissibility, since an entirely admissible interpretation may extinguish the capacity, and an inadmissible one may leave it wholly intact. It is not the question of procedure, since a scrupulous procedure may terminate in an act that closes the relation, and a careless one may leave the question fully open. And it is not the question of harm, since a party may fare badly under an act that left everything open, and may fare well under one that settled the matter permanently.

24.2 The Relation as the Bearer

That a relation should be the bearer of the property in question requires the commitment entered in §3. A term's extension is fixed within a network of usages, purposes, and practices, and the parties to an interpretive act occupy positions within that network. The party who interprets contributes to what the network contains, since each determination becomes a usage available to the next. The party interpreted upon may contribute, may be positioned to contribute in future, or may be positioned so that nothing they say enters the network at all.

The capacity at issue can now be located. A relation possesses the capacity to generate a further interpretation when the network from which the rule's terms take their content remains open to contribution from the positions both parties occupy. The capacity has three components, and they can fail separately. The question must remain askable, which fails when the matter is placed beyond the scope of any further consideration. The party must remain positioned to ask it, which fails when the party is removed from the network by the determination

itself. And what the party offers must remain capable of entering, which fails when the practices of the network admit contributions from one position alone.

24.3 Outcomes for the Capacity to Regenerate

The interpretive act stands in one of three relations to this capacity.

It may *leave the capacity intact*. The determination settles the case and the question remains live: the reading may be raised again by this party in another case, by another party in a like case, or by the organization itself upon reconsideration, and what any of them says can enter the network from which the term takes its content.

It may *narrow the capacity*. The determination settles the case and forecloses some portion of the ground on which the question might be reopened, whether by installing a reading whose revision would now require unsettling other matters, by consuming resources the party would need to raise it again, or by rendering the reading harder to see as a reading.

It may *extinguish the capacity*. The determination settles the case and leaves the question unaskable from the position the affected party occupies, and from every position relevantly like it.

The third outcome is compatible with an admissible interpretation, a fair procedure, and a modest harm. That is the finding this section exists to establish, and it is what licenses treating the capacity as an object of assessment in its own right.

25 The Criterion of Regenerability

This section states the paper's normative core, marks what it excludes, relates it to the criterion advanced in a companion paper on value conversion, and enters the difficulty of applying it.

25.1 The Criterion Stated

> **Criterion of regenerability.** *An interpretation is unjust when it extinguishes the capacity of the relation within which it was performed to generate a further interpretation of the same question. The injustice consists in the extinction of that capacity and does not consist in the adversity of the determination, in the asymmetry of the position from which it was made, or in the finality of the particular case. Where the capacity is narrowed and not extinguished, the injustice is present in degree, and the degree is the extent of the narrowing.*

The criterion turns on a distinction that must be stated before anything follows from it, since without it the criterion would condemn every decision an organization makes.

25.2 Finality of a Case and Closure of a Question

A decision must be final in some respect. A case that could be reopened without limit would never be decided, and an organization unable to close a case could not operate. Finality of the case is a condition of deciding at all, and the criterion does not touch it.

Closure of the question is a different matter. A system may hold a case finally decided while leaving the reading on which it was decided open to revision: subject to reconsideration in a later case, subject to challenge by a party in a like position, subject to argument that the network from which the term draws its content has been misread. The interpretive practice remains in motion while the individual case rests.

Injustice on the present account is the second and not the first. What the criterion condemns is the passage of a reading into a condition where it can no longer be raised as a reading, by anyone positioned to be affected by it. The individual party may accept that their case is over. What they have lost, where the criterion applies, is the standing of the question itself.

25.3 Forms of Extinction

The capacity may be extinguished in two ways, and they differ in what would be required to restore them.

Procedural extinction occurs where the channels through which a question might be reopened are cut. Time limits expire, the matter is placed within a category excluded from review, the determination is unpublished so that no later party can invoke it, or the rules governing challenge are themselves interpreted so as to exclude the challenge. The last of these is the recursive closure entered in §3, and it is the form of procedural extinction distinctive to this subject, since the power whose exercise is in question is the same power that determines whether the question may be put. Procedural extinction is reversible in principle, since a channel that was cut can be restored.

Structural extinction occurs where the determination removes the party who would reopen the question. The applicant departs and the relation ends with the determination. The member is expelled and holds no standing to raise anything. The category within which the party stood is dissolved, so no later party occupies a like position. In each case there is nobody positioned to ask the question again, and restoring a channel would restore nothing, since the party who would use it is no longer in the relation. Structural extinction is not reversible in the same way, and it is the more serious form.

A third condition should be marked, though it belongs to neither form cleanly. The capacity may be extinguished by *exhaustion*, where the channels remain open and the party's capacity to use them has been consumed by the process of arriving at the determination. Exhaustion presents as procedural openness and functions as structural closure, and it is common enough that a criterion which ignored it would miss much of what it exists to catch.

25.4 Relation to the Criterion of Conversion Closure

A companion paper on value conversion (Huang, in preparation) advances a criterion of the same shape, and the relation between them should be stated plainly, since a criterion that recurs is either a strength or a duplication and the reader is entitled to know which is claimed.

There the object is an equivalence written across categories, where one party takes a value of one kind and returns a value of another, asserting the two equivalent. The criterion is closure: the injustice arises where the second party can no longer assert the non-equivalence, or where any appeal available to them operates within the fixed rate and cannot reach the rate itself. Here the object is an extension fixed for a term of a rule. The criterion is the extinction of the capacity to generate a further interpretation. In both cases an act fixes a content that was not antecedently fixed, and in both cases the injustice is located in the loss of the capacity to reopen what was fixed.

The shared core is acknowledged. This paper extends the criterion to a second object, and the claim entered is that the recurrence is evidence for the criterion, since a normative test that identifies the same structure across acts as different as a compensation payment and an admission decision has a better claim to be tracking something than one fitted to a single case.

Three features distinguish the present application, and they are the paper's additions to the family.

The first is recursion. In the conversion case the party whose value was converted may appeal to a forum that did not perform the conversion. In the interpretive case the rules governing appeal are rules of the same organization and are interpreted by it, so the power in question extends to the conditions of its own review. Closure can therefore be achieved without any deliberate act of foreclosure, by the ordinary operation of the power upon the rules that would constrain it.

The second is temporal reach. A conversion rate closes for the parties to it. An interpretation closes for a class, since the reading enters the network as a usage and is available to govern every later case of the same kind. The population of parties affected by an interpretive closure is therefore indefinite, and includes parties who have not yet arisen and cannot be consulted.

The third is the asymmetry boundary of §23, which the conversion paper had no occasion to establish. There the possibility of external remedy could be left open. Here it has been shown that the available instruments are bounded by a stake the interpreting body may not hold, so the criterion is being advanced for a class of cases in which no remedy of the surveyed kind is available. That is a harder position for a criterion to occupy, and the following section states what it costs.

25.5 The Exclusions of the Criterion

A criterion earns its content by what it declines to condemn, and this one declines a great deal.

It does not condemn an adverse determination. A party against whom a rule has been interpreted has suffered no injustice on this account, however unwelcome the outcome, provided the question remains askable from the position they occupy.

It does not condemn the asymmetry of the interpretive position. That one party determines and another receives the determination is constitutive of rule-governed decision, and an organization unable to fix the application of its own rules could not decide.

It does not condemn finality, for the reason given above.

It does not require that the affected party's reading prevail, nor that the organization be persuaded, nor that any particular procedure be available. What it requires is that the question survive the answer.

It does not condemn the settlement of a reading over time. An interpretation that has been raised, contested, and repeatedly affirmed may become settled through use, and settlement of that kind is the ordinary consolidation of a practice. The criterion attaches to the extinction of the capacity to raise the question and not to the stability of an answer that has withstood raising.

25.6 The Difficulty of Application

Two difficulties attach, and both are entered here so that a reader does not have to discover them.

The criterion applies retrospectively with more ease than prospectively. Whether the capacity to reopen a question was extinguished is answerable once time has passed and nobody has been able to reopen it. Whether a determination will extinguish it is answerable at the moment of decision only by conjecture, and an organization acting in good faith may be unable to tell which of its determinations is of the closing kind. A criterion usable only in retrospect is of limited service to the party before whom the determination stands.

And the criterion states a requirement without stating how it is met. To hold that a just interpretation leaves the question askable is to say nothing about what sustains askability in an organization over time, which is a matter of institutional condition, of the disposition of those who hold interpretive office, and of the standing of parties who are not present. Both difficulties are carried forward to the open questions, where they are put in the form in which they might be worked on.

25.7 The Position of the Criterion

The criterion delivers one thing the devices of §23 do not, and fails to deliver one thing they do.

What it delivers is assessability without a constituency. Whether an interpretation left the question askable is a property of the act and the relation, and it can be asserted by the

affected party, by an observer, by a later party, or by the organization itself in reflection. It does not require that anyone hold a stake, that any forum have jurisdiction, or that any mark be withheld. Where the asymmetry boundary leaves nothing to be done, something can still be said, and said with a definite content.

What it fails to deliver is any consequence. A criterion that identifies an injustice and supplies no party to act upon it has stated a fact about the world and has changed nothing in it. The following section asks whether anything follows from an interpretive closure in the absence of a party to enforce against it, and the answer given there is weaker than the question deserves.

26 Delegation to Dynamics

The criterion of §25 identifies an injustice and supplies no party positioned to act upon it. This section asks what follows from an interpretive injustice where no such party exists. A way of seeing is proposed, and the greater part of the section is given to what it does not assert, since the readings available to a sympathetic reader are stronger than the claim and would not survive examination. The section is offered in the spirit of a preliminary work: the account is extensible, it invites revision, and it is framed so that its useful part can be kept by a reader who discards the rest.

26.1 The Standing of What Follows

This section is the most speculative in the paper, and its standing should be fixed before it is read. What follows is not a result. It is a way of seeing, offered because the criterion of §25 leaves a question that the vocabulary of remedy cannot address, and because a dynamical vocabulary allows the question to be posed even where it cannot be answered. The section proposes a shape and disowns the mechanism. A reader persuaded by §§23–25 and unpersuaded by everything here loses nothing that those sections established, a severability the paper states again in §28.

26.2 The Barrier to Generativity

An organization is a structure of relations: among its officers, between the body and those it decides upon, between a rule and the cases brought under it. The capacity identified in §24, by which a relation generates a further interpretation, is distributed across those relations, and it is the capacity by which the organization keeps its readings fitted to conditions that do not stand still.

Interpretive injustice barriers that capacity. It does so through operations on the organization's relational grammar that are heterogeneous and that this paper does not claim to enumerate: a rule may be added that forecloses a question, a practice that enabled revision may

be withdrawn, a standing that would have carried a challenge may be rendered inapplicable, a channel that connected a grievance to a determination may be severed. These are different operations with different proximate forms, and the account offered here abstracts over them. What it attends to is not which operation obtains but the functional signature they share: the affected relations lose, in some degree, the capacity to generate a further interpretation. The claim is pitched at that functional level deliberately, and its generality is the point. If the consequence sketched below follows, it follows from the loss of generativity and not from any particular way of bringing the loss about, so the heterogeneity of the operations is a feature of the account and not a gap in it.

26.3 From Barrier to Drift

A generativity that was working kept the organization fitted to a moving environment by continual small adjustment, each odd case answered by a reading that had not existed before. Barriered, that adjustment stops for the relations affected, while the environment they were fitted to does not stop moving. A distance opens between what the organization is organized to handle and what reaches it, and the distance widens without injustice performing any further act, carried by the ordinary motion of the world. Nothing announces the widening, since the channel that would have registered it is among the casualties of the barrier: a question no party can raise generates no complaint, and the absence of complaint presents from inside as the absence of a problem.

In the vocabulary of the companion work on historical dynamics (Huang, in preparation, b), the same is expressible as a decline in a capacity to absorb disturbance. A configuration's stability is its capacity to absorb disturbance and return to its form; a barriered generativity is a reduced capacity of that kind; and a configuration whose capacity to absorb has declined stands nearer to a boundary at which a disturbance it would formerly have absorbed carries it elsewhere. What the account does not supply, and what should be conceded before the routes are set out, is the disturbance itself. The decline of a capacity is not a force. It makes a configuration fragile and does not push it, and whether and when a disturbance arrives to find it fragile is outside anything the account of injustice determines.

26.4 Some Routes From Barrier to Fragility, Offered as Illustration

The step from a barriered generativity to a declining capacity to absorb can be traced along several routes, and four are set out here. They are offered as illustrations of how the step might go and not as the mechanism, which the account has disowned. They are neither exhaustive nor jointly necessary; a reader who rejects all four may still hold the functional claim of §26.2, and a reader who adds a fifth is doing what the account invites. They differ in strength and in the evidence available for them, and they are given in ascending order of support.

Loss of error correction. A barrier to generativity removes a channel through which an organization learns that a reading has ceased to fit. Its weakness as a route is that an organization has other sources of information, and that a reading may go unfitted for a long time without anything depending on the fit.

Withdrawal of voluntary compliance. Rule systems are administered on the compliance of those subject to them, and enforcement against the non-compliant is expensive. Tyler (1990) establishes that compliance turns substantially on the perceived fairness of the procedures by which authority is exercised, and does so more strongly than on the favourability of outcomes. A practice that determines questions and forecloses their reopening is a practice whose fairness those subject to it have reason to doubt. On this route interpretive closure raises the cost of governing, continuously and without any single episode being decisive. This route has empirical support that the first lacks, and it does not depend on the organization failing to notice anything.

Selection and the loss of variety. Parties who cannot contest a determination exit where exit is available, and parties who observe the practice from outside decline to enter. Those who remain are disproportionately those for whom the closed reading is unobjectionable. The variety of positions represented within the organization's field therefore falls. Ashby (1956) states the relevant principle in general form: a regulator must command variety at least equal to the variety of the disturbances it is to handle. An organization whose interpretive practice reduces the variety it encounters is reducing the variety it can answer, and Hirschman (1970) supplies the mechanism by which the reduction occurs.

Latent accumulation. A closed question does not cease to be a question for the party who holds it. Grievances persist without registering, and they persist unregistered for precisely the reason that makes closure closure: no channel exists through which they would be recorded. The stock of such grievances is a slow variable in the sense of the companion work on historical dynamics (Huang, in preparation, b), and its growth is invisible in the indicators an organization consults, since those indicators are fed by the channels closure has cut.

The four routes are not alternatives among which the account must choose, and where more than one operates they compound: an organization losing its error correction may also be raising its cost of governing, narrowing the variety it faces, and accumulating what it cannot see. The paper does not claim that any of them operates in a given case. It claims that a barrier to generativity is the kind of thing from which routes of this sort may run, and it leaves the identification of the routes that run in a particular organization to work it does not undertake.

One limitation applies to every route and belongs here and not only in §27. Each describes a decline in the capacity of a configuration to absorb disturbance. None supplies a disturbance. The passage from a shallowing basin to a departure from it requires something to arrive, and nothing in the account of injustice determines that anything will, or when. This is why the account predicts, as its ordinary case, long intervals in which an injustice has been done, the

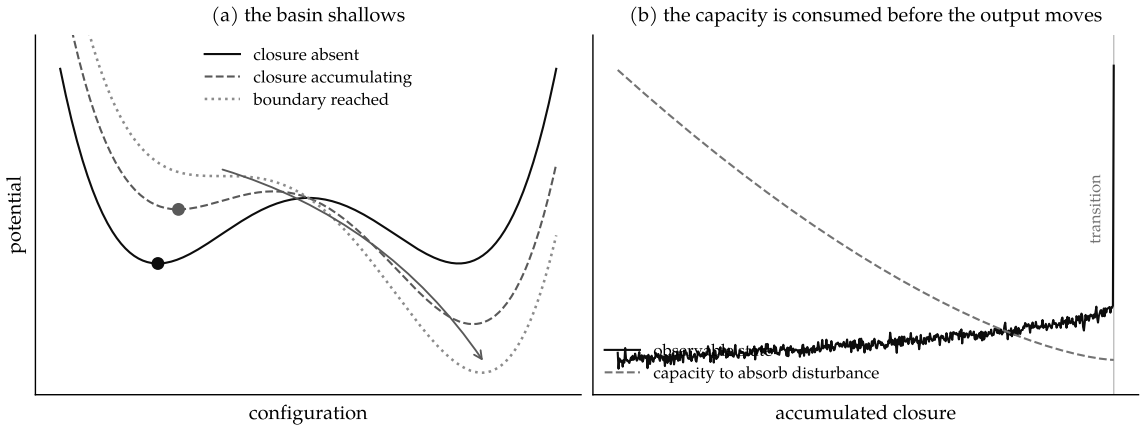

Figure 1: An illustration, not a model. In (a) a configuration occupies a basin whose depth stands for its capacity to return after a disturbance; as a barrier to generativity accumulates, the basin shallows, and past a threshold an ordinary disturbance carries the configuration into a neighbouring basin. In (b) the same process is drawn against accumulated barrier: the capacity falls toward nothing while the observable state moves very little, so that the decline is not registered by the indicators an organization would consult. The figure is drawn from a one-dimensional potential chosen for legibility and makes no empirical claim; the number of dimensions, the shape of the landscape, and the location of any boundary in a real organization are all unknown. Three cautions are built into the drawing. The second basin carries no evaluative content and is not the better one. The picture shows departure and says nothing about which configuration is reached. And the transition is a re-formation of the ordering among persisting parts and not a destruction of them.

capacity to absorb has fallen, and nothing whatever has followed.

A last point concerns what happens if a disturbance does arrive to find the capacity spent, and it answers a question the dynamical vocabulary raises and does not obviously settle: why the outcome should be reorganization and not destruction. The barrier to generativity operates on the organization's relational grammar, on the rules, standings, and channels that order its parts. It leaves the parts themselves untouched. The officers, the resources, the accumulated competence, and the population the organization serves all persist through the transition. What the accumulated misfit discharges, when it discharges, is the ordering and not the material, and the same parts re-cohere under an altered grammar: a revised rule, a changed standing, a reconstituted body. Departure from a stable configuration is on this account a reformation of a persisting set of elements, which is the sense in which a system pressed off one attractor reorganizes toward another and does not simply cease. The account is silent, and should be, on whether the configuration that succeeds is an improvement, on how long the passage takes, and on which of the available configurations is reached.

Figure 1 states the picture the routes illustrate and states its limits in the same breath. The left panel gives the received image of a stability landscape, in which the depth of a basin rep-

resents the capacity of a configuration to return after being disturbed. The right panel carries the one claim the section presses. What declines under a barrier to generativity is a capacity, and a capacity is not an output. An organization consulting its own indicators sees a state that holds steady, and the steadiness is compatible with the capacity having been almost wholly consumed. This is why an organization is poorly placed to notice the condition described here, and it restates in dynamical terms the epistemological point entered in §3: among the things a barrier to generativity removes is the instrument by which its own effects would have been registered. The figure earns its place by making that one point visible. It should not be read as asserting anything about the true dimensionality of an organization's state, which the account does not know.

26.5 A Complication the Account Must Carry

An objection arises at once and it is a good one. Closure removes the corrective channel, and it also removes the disturbances that the channel carried. An organization that hears no complaints is subject to fewer live perturbations, and quietness of that kind is a form of stability. On the face of it closure may make a configuration more stable and not less.

The objection is partly right and the concession should be entered. What closure removes is the organization's capacity to respond to change communicated through the parties before it. The conditions those parties inhabit continue to change whether or not the organization hears of it, and disturbance reaches an organization by routes other than the complaints of the parties it decides upon: through the bodies it depends on, through the environment in which it operates, through the eventual conduct of parties who were never able to say anything. Closure therefore purchases quiet at the cost of correspondence, and the configuration becomes at once less disturbed and less fitted. Whether the net effect on stability is a decline is a question the account cannot settle in general, and the claim entered here is confined to the capacity to respond, which closure reduces without qualification.

26.6 The Criticality Condition

A disturbance carries a configuration out of its present form only where the configuration already stands near a boundary. Away from such a boundary, disturbances are absorbed and the configuration returns, and the arrival of a disturbance produces nothing an observer would record.

The consequence for the present account is severe and should be stated as such. An organization may interpret unjustly, close the questions its interpretations raise, and continue in that condition for a very long time with no consequence whatever. The account predicts this, and predicts it as the ordinary case, since most configurations at most times are far from any boundary. Any reading on which injustice reliably produces its own undoing is contradicted

by the account itself, which supplies no disturbance and no schedule on which one would arrive.

26.7 Disclaimers on Direction, Stability, and Timing

Three things the account does not say are entered below, each as a denial, because each is what a sympathetic reader is likely to supply on the account's behalf.

It supplies no direction. A configuration leaving its present form arrives at another, and nothing in the mechanism determines which. Reorganization following the reordering of an unjust arrangement may install an arrangement that is worse, and the historical record contains many such sequences. The account describes a configuration losing its capacity to absorb disturbance and says nothing about what succeeds it. A reader who takes the mechanism to mean that unjust organizations are in due course replaced by better ones has added a premise the mechanism does not contain, and the added premise is false.

Stability carries no evaluative content. That a configuration persists is a fact about its capacity to absorb disturbance and is no evidence about whether it is defensible. A just organization may be stable, an unjust one may be stable, and each may be unstable. The point cuts against the present account as much as it cuts for it: an organization that has closed its questions may persist longer than one that has not, and its persistence would be no vindication, exactly as its collapse would be no verdict.

It supplies no timing. The mechanism states no rate. The interval between a closure and any reorganization is unspecified and may exceed the working lifetime of every party affected, of every officer responsible, and of the organization's present form. A party wronged by a closure today is assured of nothing on any horizon that concerns them.

26.8 The Distance from Retribution

The mechanism resembles, in outline, a familiar moral picture in which wrongs are eventually repaid, and the resemblance is superficial. The differences are worth setting out, since the picture is attractive and would ruin the account.

Retribution requires an agent who repays, and the account contains no agent. It requires proportion between the wrong and what follows, and the account supplies none, since the magnitude of a reorganization is a function of the configuration's condition and not of the gravity of any act. It requires that what follows fall upon the party responsible, and the account supplies no targeting at all: a reorganization falls upon whoever is present when it arrives, which will include parties who were themselves wronged by the closure and officers who inherited a practice they did not make. And it requires reliability, which the criticality condition entered above has already withdrawn.

A further caution belongs here, addressed to the use of the account and not to its content.

A reader persuaded of the account might conclude that action against interpretive injustice is unnecessary, since the structure will in due course answer for it. That conclusion does not follow from anything asserted here, and it is contradicted by the criticality condition and by the disclaimer on direction entered above. The account describes what happens in the absence of action. It supplies no reason to withhold action, and it would be a poor use of a descriptive claim to convert it into a consolation.

26.9 The Standing of the Claim

The claim is a conjecture about a mechanism and is not a law. Whether organizations exhibit the behaviour near stability boundaries that is borrowed here from other domains is unsettled, and the borrowing is made on the ground that the structure of the argument is intelligible without it and gains precision from it. The proposition entered is that reorganizations of an interpretive practice are more likely where a configuration's capacity to absorb disturbance has declined than where it has not, which is weaker than any claim about necessity and is what the argument requires.

Two limits attend the conjecture. No formal model is offered, and the abstention is deliberate for the reason given in the companion work: a model written to accompany an argument of this kind would supply an appearance of rigour the argument has not earned, and the mechanism admits of honest statement in prose. And no party can reliably determine how near a configuration stands to a boundary, from inside it or from outside. The account therefore yields no operational guidance of the form that would counsel an organization to remain at a safe distance, since the distance is not observable, and any practice it recommends must be one that does not require knowing where the boundary lies.

26.10 The Surviving Claim

After the denials something remains, and it is modest and usable.

The account supplies a description under which interpretive closure is a loss to the organization that performs it. On the ordinary description, closure is a cost imposed upon a party and a convenience for the body, and the body's interest lies in maintaining it. On the description offered here, closure removes the organization's own means of learning that a reading has ceased to fit, and the organization is the party that will operate for an indefinite period on readings it can no longer correct.

The significance of this is that it does not require a constituency. Every device surveyed in §23 works by supplying an external reason to interpret well, and each fails where no external party holds a stake. A reason of the present kind is internal: it is available to an organization that has no dependence on anybody and considers what closure does to its own capacity to remain fitted to the conditions it operates in. This is the one form of leverage the asymmetry

boundary does not eliminate, and §27 enters the condition under which it too fails.

27 The Limits of the Account

The account is now complete enough to be priced, and the price is high. This section states what has not been delivered.

No enforcement. The criterion identifies an injustice and equips nobody to act against it. Where the devices of §23 apply, they impose costs and secure remedies; the present account imposes nothing and secures nothing, and it does not supplement those devices at the point where they work.

No remedy for a present party. A party before whom a closure stands gains from this account a description of what was done to them and no route by which it might be undone. The description may be of some worth, and it is not a remedy, and the paper should not be read as offering one.

No protection in the case that motivated it. This is the sharpest of the limits. The account was developed because the surveyed instruments are bounded by a stake that the bodies of greatest concern may not hold. The account does not protect a party against such a body either. It describes the act and its consequences for the body, and description is what it delivers in place of protection.

Retrospective application. As §25 entered, closure is identifiable with confidence once time has passed and difficult to identify at the moment of decision, which is the moment at which identifying it would matter.

No operational form. The criterion turns on the capacity of a relation to generate a further interpretation, and no procedure is offered by which that capacity may be assessed in a given case. What would count as evidence that a question remains askable, and by whom the assessment would be made, are unsettled, and a criterion in that condition is a proposal for work and not an instrument.

The internal reason has a condition. The leverage identified in the subsection on what survives requires that an organization weigh its own capacity to remain fitted over a period long enough for unfitness to matter. Officers whose horizons are shorter than that period hold no such interest, and an organization whose decision-making is distributed among such officers may be unable to hold the interest even where every officer would acknowledge it in the abstract. The internal reason therefore reintroduces a version of the difficulty it was offered to escape, at a different level: a stake in the long-run condition of the body is still a stake, and it too can be absent.

Two things are claimed against this list. The first is that the criterion states, with a definite content, an injustice that the existing vocabulary of distributive, procedural, hermeneutical, and republican concepts does not isolate, and that the isolation is worth having independently

of what can be done with it. The second is that the boundary of §23 is a result about the world and not a failure of this paper, and that an account which stops where the boundary stops is reporting a limit correctly, whereas an account that proposed a further device of the surveyed families would be evading it. Whether these are sufficient is for the reader.

28 Open Questions

This paper identifies a neglected structure. It does not complete a theory of it, and the questions set down here are held to be the more valuable part of what is offered, since a structure worth naming is worth other people working on.

If the structure is real, the following questions arise immediately.

The first group concerns the authority to interpret.

Q1. Is interpretive standing delegable? An organization may confer upon a body outside itself the authority to determine what its own rules mean, and it is unclear whether such conferral escapes the recursion entered in §3 or relocates it, since the terms of the conferral are themselves rules, and their interpretation must be held somewhere.

Q2. What makes an exercise of interpretive authority legitimate? Candidate grounds include conferral by those subject to the rules, demonstrated competence in the practice from which the rule's terms draw their content, participation by affected parties in the determination, and continual revisability of what is determined. These are not equivalent and may conflict, and no ordering among them is proposed here.

The second group concerns the modes and objects of interpretation.

Q3. Can the edge of the admissible be located before the fact? Section 3 holds that the space of admissible readings is bounded, and locating the boundary is straightforward once a reading has been shown incompatible with the network and difficult in advance of the showing. What would license a claim, made at the moment of decision, that a proposed reading lies outside the space?

Q4. Do evaluative predicates differ in kind from other open-textured terms, or only in the proportion of cases falling in the penumbra? If in kind, what marks the difference, and if in degree, whether there is a proportion beyond which a term ceases to function as a rule at all.

Q5. Does the recursion of §3 admit of degrees? An organization might insulate the rules governing challenge from the power those rules constrain, by fixing them beyond amendment, by committing their interpretation elsewhere, or by other means, and it is open

whether any such arrangement reduces the recursion without transferring the whole matter outside the organization.

The third group concerns protection, and follows from the boundary of §23.

Q6. Under what conditions can a constituency be constituted? Section 22.6 identifies the practical route this paper does not take, which is to supply the stake the devices require by aggregating parties who individually hold none, or by attaching the interpretive practice to a condition held by a party the organization does depend upon. What determines whether such aggregation succeeds is a question for the study of collective action and of institutional design, and the answer bears directly on how much of the boundary is fixed.

Q7. How far does the examination exception generalize? The German decisions discussed in §23 reached a substantive evaluative judgment that comparable forums decline to review. What class of evaluative acts admits criteria articulable enough to support review of that kind, what determines membership of the class, and whether comparative judgments can ever belong to it, are open.

Q8. Can interpretive closure be identified prospectively? Section 25 applies with confidence in retrospect. An account that could identify, at the moment of decision, that a determination is of the closing kind would be of use to an organization acting in good faith, and nothing offered here supplies it.

The fourth group concerns the dynamics proposed in §26, where the questions are the sharpest because the claims are the weakest.

Q9. Does interpretive closure raise or lower a configuration's capacity to absorb disturbance? Section 25.2 states the complication and declines to settle it: closure removes a corrective channel and removes the disturbances that channel carried. Which effect dominates, and whether the answer varies with the source of the disturbance, is unresolved and is the point at which the dynamical claim is most exposed.

Q10. Under what conditions does an interpretive closure register at all? If disturbances are consequential only near a stability boundary, then most closures produce nothing observable, and the account gives no way of telling which are of the other kind. Whether any observable signature accompanies the approach to such a boundary, in an organization as opposed to the physical systems from which the vocabulary is borrowed, is open and would be worth having.

Q11. What would count as evidence for or against the mechanism? The conjecture of §26 is stated in a form that resists testing, since it predicts long intervals of no effect and

specifies no rate. A formulation that could be disconfirmed would be an improvement on what is offered, and supplying one is work this paper leaves undone.

The last question is the one the whole account is directed toward, and it is placed last because everything above bears on it.

Q12. Under what institutional, social, and relational conditions can an interpretive practice remain regenerative? The criterion of §25 states a requirement and says nothing about what meets it. An organization that wished its questions to remain askable would need to know what sustains askability across changes of personnel, across the settling of readings into usage, and across the ordinary pressure toward finality that decision-making generates. This is the question on which the practical value of the account depends, and it is entirely open.

A closing observation about the shape of the list. The questions of the first three groups could be pursued within existing disciplines, and several are being pursued there already under other descriptions. The questions of the fourth group could not, and they are the ones on which the account offered here stands or falls. A reader who finds the criterion of §25 useful and the mechanism of §26 unpersuasive may take the first and leave the second, since the criterion is stated independently and does not rest upon the dynamics. The reverse is not available: the mechanism is a claim about what follows from closure, and it requires the criterion to say what closure is.

A note on method. No formal apparatus has been used, and the abstention is deliberate. The mechanism of §26 could be written in the notation of dynamical systems, with a configuration answering to a point in a space of institutional states, a corrective channel to a feedback term, and a closure to the removal of one. Written out, such a model would derive nothing that the prose does not state, and it would supply an appearance of precision that the argument has not earned. The conditions under which the notation would become honest are set out in Q9 through Q11, and they have not been met here.

A note on sources. The instruments surveyed are revised on cycles and the doctrines are subject to overruling. Statements about the content of standards, statutes, and case law are given as of the date of writing and should be verified before being relied upon, and the recent displacement of a long-settled deference doctrine in one of the jurisdictions discussed is a reminder that the caution is not formal.

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