Perspectives in Pragmatics, Philosophy & Psychology 10

Francesca Poggi
Alessandro Capone *Editors*

# Pragmatics and Law

## Practical and Theoretical Perspectives

Springer

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Volume 10

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# Pragmatics and Law

## Practical and Theoretical Perspectives

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ISSN 2214-3807 ISSN 2214-3815 (electronic)
Perspectives in Pragmatics, Philosophy & Psychology
ISBN 978-3-319-44599-1 ISBN 978-3-319-44601-1 (eBook)
DOI 10.1007/978-3-319-44601-1

Library of Congress Control Number: 2016959461



Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer International Publishing AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

# Preface

This volume is the second part of a project which aims at exploring the last boundaries of the interdisciplinary studies concerning both legal theory and philosophy of language. The first part of the same project is represented by the book *Pragmatics and Law: Philosophical Perspective* (Springer, 2016). Here, using the most sophisticated tools available in the international debate, a group of experts in pragmatics, sociolinguistics, cognitive sciences, artificial intelligence and legal theory engage problems concerning the relationship between language and law to highlight the salient features of both phenomena.

Law is a linguistic phenomenon. Legal provisions of all levels (i.e. pertaining to constitutions, statutes, contracts, and so on) are written in natural language (even if with the addition of technical terms and in a peculiar style), and this language is supposed to guide citizens' everyday life and to ground the courts' decisions. Not surprising, some legal philosophers have claimed that law is language – it's the language of the sovereign (Bentham 2010, 45ff.) or the legislator (Bobbio 1950). Now everybody recognizes that picture as too simplistic. The law is not merely a set of signs carrying a meaning; it is a more complex phenomenon and a practice, but, as outlined by Hart (1961), a practice which presents peculiar linguistic features or which emerges at a linguistic level. Therefore, both legal experts and legal theorists engage with linguistic issues to solve practical legal problems (e.g. to interpret legal texts or to value the reliability of a testimony), to grasp the salient features of legal practice and/or to clarify the nature of law. It then is clear that the theories and concepts elaborated within the philosophy of language (in a broad sense) can help legal scholars in their tasks. A first issue that this book deals with is precisely how to employ tools pertaining to pragmatics, sociolinguistics, cognitive sciences and, more in general, philosophy of language to solve debated legal problems concerning the practice, the theory (i.e. the conceptualization of the practice) and the nature of law.

Not only can the philosophy of language improve our legal knowledge, but legal knowledge can improve the philosophy of language. In fact, the law represents a new field of investigation for linguistic experts – a field in which they can test their theories, explore their limits and enhance the knowledge of ordinary conversation by comparing it with legal language. In this comparison, legal philosophy is an

essential speaker; its theories, conceptual instruments and problems are unavoidable coordinates for any discussion on law.

While the previous volume mainly faces problems related to the similarity and divergence between legal texts and ordinary conversations (and, therefore, between legal theory and philosophy of language), this book focuses on single relevant legal problems. It aims to solve these problems as well as to refine the conceptual tools elaborated within pragmatics, sociolinguistics, cognitive sciences and philosophy of language, testing their explicative power within the legal field.

In particular, this volume is divided into three parts. The first part, which includes seven chapters, is devoted to the problems of legal interpretation, i.e. the problems concerning the identification and understanding of the meaning of legal texts. The authors face questions such as what should count as the meaning of a legislative act, what is the role of the speaker's communicative intentions, and, especially, whether those intentions are decisive, must be limited by other factors (such as contextual elements and/or some kinds of rules) or do not play any salient role by themselves. These topics are inquired both in general (see Chaps. 1, 5, and 6) and in particular (see Chaps. 2, 3, 4, and 7).

General enquiries are conducted through reconstructions of the salient features of legal interpretation and proposals of a theoretical framework of legal meaning and/or of processes of grasping it while others focus in regard to more particular (although sometimes pervasive) aspects of legal interpretation such as legal implicit meanings, the phenomenon of legal vagueness, the possibility of non-literal legislative speech and the phenomenon of semantic battles. The authors do not all share the same theoretical background. To explain the aforementioned phenomena, they employ theoretical tools elaborated by different pragmatic/semantic approaches, from Brandom's inferentialism to Gricean and post-Gricean theories to (various forms of) contextualism. This enables the reader to get an idea of the different perspectives and to compare their explanatory force respect to legal interpretation.

More specifically, the content of the first part, *Pragmatics and Legal Interpretation*, is as follows. In Chap. 1, Kasia Jaszczolt addresses a very fundamental metasemantic question, namely what should count as meaning of expressions for the purpose of theoretical inquiry, and in particular what should count as the intended message of a legislative act. She claims that semantic theory ought to deal with intuitive meaning, that is, with the meaning intended by the speaker and recovered by the addressee, with the proviso that all goes well in assuming at one hand, and recovering at the other, the background that enables the interlocutors to leave some aspects of the message unsaid. This is called primary meaning. The core question, however, remains and concerns the kinds of contributions that context makes to this richly, contextually construed, truth-conditional representation. Jaszczolt demonstrates through selected examples that any attempt to regiment meaning by using the explicit/implicit distinction, directly referential/contextually referential, or indexical/non-indexical distinction do not yield the primary meaning intended and recovered in linguistic interaction. As a result, the question of accountability arises; if the primary meaning can be implicit, context-driven and multidimensional, then is it this meaning for which the speaker should be accountable? To ask this question,

the author proposes a sophisticated version of salience-based contextualism and shows how it applies to represent the (legal) primary meaning in a famous court case.

In Chap. 2, Marina Sbisà claims that full comprehension of a text includes the grasping of its presuppositions (content the truth of which is taken for granted) and implicatures (content made available to the recipient in addition to what is said), insofar as these can be worked out by the receiver on the basis of linguistic triggers included in the text and under the assumption of Grice's Cooperative Principle (see Grice 1989, 22ff.) and therefore normatively determined. What she calls the 'normativity of implicitness' is thus a limit to arbitrariness in legal interpretation and enables the recipients of normative texts to exploit presuppositions and implicatures to get a more complete grasp of the normative background surrounding a norm, the motivations of the norm, its content and possible applications. Such an understanding, according to Sbisà, constitutes a premise both to one's capacity to conform to the norm and to one's ability to take a critical stance with respect to it. Sbisà exemplifies her approach to the practices of explicitation and their results by discussing two examples, one from the regulations of a condominium and another from a law proposal of the Italian Parliament.

Chapter 3 deals with the fundamental problems of the representation of meaning, or the role of the speaker's intention and context in legal interpretation, but it does so from a different perspective and employing different theoretical apparatus. Damiano Canale challenges the traditional picture according to which the full linguistic content of an authoritative legal sentence is what the author intended to communicate by uttering it in a given context, and, therefore, in the case of vague legal sentences, intentional content would be the only suitable means to determine whether a borderline case falls under the regulation in question. Canale argues that this picture does not provide a convincing explanation of how legal language works because it does not consider the peculiar characteristics of institutional legal contexts. Therefore he outlines an alternative account of linguistic content and vagueness in law based on Brandom's inferentialist approach to semantics and pragmatics (Brandon 1994, 2000, 2008). On this account vagueness is a feature of language which depends on a specific form of disagreement between the participants in an exchange of reasons. By looking at the linguistic interplay among the parties and the judge in a legal dispute, the chapter shows how vagueness arises and how it is reduced by courts to settle the case at issue.

Chapter 4 again faces the problem of the relevance of a legislator's intention in grasping legal meaning but through the peculiar perspective of non-literal speech. Hrafn Asgeirsson enquires whether non-literal legislative speech can occur in law. He claims that, due to the fact that legislative contexts generally contain little unequivocal information about legislative intent, interpreters typically are not warranted in taking the legislature to have intended to communicate something non-literal. The author says that this argument has some significant consequences for the extent to which we should take the content of the law to be determinate. The basic idea is that in the relevant scenarios the audience ought to withhold belief regarding the speaker's communicative intentions, in which case the primary content of the

relevant utterance is indeterminate between the literal content of the sentence uttered and some pragmatic enrichment thereof. This has strong implications for the analysis of a number of important but controversial legal cases, which Asgeirsson discusses in detail.

In Chap. 5, Pierluigi Chiassoni reaches conclusions opposite to those in the previous chapter as regards the possibility of a genuine knowledge of the literal meaning and its identification with the speaker's meaning. Chiassoni engages in the perennial debate about the proper account of judicial interpretation. Briefly, this dispute turns on the following alternative: Is judicial interpretation necessarily (i.e. as a matter of empirical necessity) an evaluative, practical, judgment-dependent, decision-making activity, or, at least sometimes, is it rather just a matter of knowledge, a pure 'grasping' of the content of law? The thesis called *skepticism* (or *non-cognitivism*) supports the first alternative, while the view named *formalism* (or *cognitivism*) supports the latter. Here Chiassoni defends interpretive legal skepticism as the proper account of judicial interpretation through pragmatic arguments. He shows that philosophy of language and pragmatics as a substantive part thereof, far from providing support for some form of cognitivism, suggest contrariwise that it should be abandoned.

Chapter 6 deals with the same topic as Chap. 5 but Nicola Muffato focuses on the philosophical and rhetorical contact points between general communicational skepticism and interpretive legal skepticism. He explores how interpretive legal skepticism can be grounded on Quine's and Davidson's indeterminist conclusions (see Davidson 1973; Quine 1987) and on deconstructionism (Derrida 1988), and then he enquires as to the possibility of employing against interpretive legal skepticism a criticism of these conceptions, based on Wittgensteinian arguments (Wittgenstein 1958) and developable along various lines by 'practice-based' conceptions of meaning.

In Chap. 7, Ekkehard Felder deals with the fascinating topic of the "semantic battles" approach: The attempt to implement certain linguistic forms as expressions of specific interest-led action and thought patterns in a domain of knowledge. Through this approach, he shows that dominance and power are exercised through semantics! The semantic battle is differentiated as an implicit or explicit conflict about the fittingness of linguistic expression with regard to three perspectives: the level of designation and definition (a number of expressions give prominence to different aspects of a fact), the level of meaning (one and the same expression has different connotations and accentuations) and the level of facts and reference objects (seemingly identical or actually identical reference objects are differently constituted). The author offers clear examples of semantic battles at all three levels. In particular, Felder characterizes the speech acts performed by legal workers in the battle over the applicability of verbal formulations and the accompanying perspectives.

The second part of the book, *Pragmatics and Legal Theory*, includes five chapters that appeal to the most sophisticated pragmatic tools to deal with debated issues of legal theory. Problems like the normativity of legal norms (Chap. 8), the strength of legal positivism (Chap. 9), the theoretical structures of imperatives (Chap. 10),

the aims of the law (Chap. 11) and, the institutional design of new field of experiences and systems of knowledge (Chap. 12) are discussed, employing theories and concepts developed within pragmatics, socio-linguistic and philosophy of language – concepts and theories such as presuppositions, metalinguistic negotiations, illocutionary force and web-semantics.

In Chap. 8, Michael Green faces a traditional, highly problematic topic of legal philosophy: a commonly assumed requirement for an adequate theory of law (the *requirement*, for short) is that it must explain the unique role of legal norms in practical reasoning. It must explain why participants in legal practices should justify their decisions by appeal to legal norms rather than pointing solely to how practice-independent norms, such as morality and prudence, are triggered by the existence of legal practices as social facts. He critically analyses how the most important theories of law (Kelsen's, Hart's, Dworkin's, Shapiro's and legal realistics' theories) faces the requirement. In particular, he argues that Hart's response to the requirement is centred on the notion of internal legal statements (ILSs) and that it is deceptive (see Hart 1961). According to Green, Hart provides no account of why officials should justify their decisions through ILSs rather than solely on moral and prudential grounds. This casts doubt on Hart's theory of law as a whole. Hart fails to explain why law vanishes when officials stop making ILSs and begin justifying their decisions by reference to morality and prudence. In particular, Green critically analyses the Hartian claim according to which someone making an ILS presupposes the rule of recognition, showing how this presupposition links with Hart's failure in satisfying the requirement.

In Chap. 9, Teresa Marques discusses arguments advanced by Plunkett and Sundell (Plunkett and Sundell 2013), who have made an original use of resources from linguistics and philosophy of language to reply to arguments for legal anti-positivism, the thesis according to which moral or value facts are part of what determines what the law is in a given jurisdiction at a given time. Plunkett and Sundell's strategy for resisting anti-positivism appeals to the notion of a metalinguistic negotiation, which incorporates the notion of a metalinguistic or context disagreement. A further notion deployed is that of conceptual ethics, an essential component of metalinguistic negotiations. Marques asks about the strength of both notions against disagreement-based arguments for legal anti-positivism. She argues that metalinguistic negotiations displace disagreements from the semantic to the metalinguistic level but do not eliminate the appeal to moral or other normative reasons from legal disagreements. In fact, according to Marques, on a broad understanding of legal reasoning and practice, metalinguistic negotiations and conceptual ethics are an integral part of it and hence are consistent with evaluative and normative facts being essential to, and constitutive of, the law.

In Chap. 10, Alessio Sardo deals with one of the central issues in normative language: the relation between semantic meaning and illocutionary force. The main question is whether or not we should consider the two features as neatly separated. Those authors who give a positive answer to this question maintain that every speech act expresses the same type of semantic content (a proposition) and confine all those elements that belong to illocutionary force in the domain of pragmatics.

Those who give a negative answer to the question maintain that illocutionary force also has a semantic dimension: What we do *in* saying something is determined also by certain features that are encoded in the deep logical structure a statement, or utterance, by convention. This problem was present in Frege and always has been the object of a lively discussion, at least in philosophy of language. Sardo offers a general and broad survey of the main solutions offered to this quandary both in philosophy of language and in legal theory. His analysis also takes into account some of the most recent theories and suggests that an integrated approach would be the best.

In Chap. 11, Leticia Barrera leads a sociolinguistic study on legal technicalities (e.g. legal instrumentalism, managerialism, procedures), exploring the means to end a relationship enclosed in legal techniques. In particular, she engages a context-based analysis of the technical knowledge embedded in the constitution of legal and financial instruments in the context of sovereign debt agreements. The study draws on a concrete case of sovereign debt litigation in US courts: *NML Capital, Ltd. v. Republic of Argentina* that came out of this country's foreign debt default in 2001 (following a larger economic crisis) and debt restructurings in 2005 and 2010. The US court's ruling, however, is not analysed in its legal, economic and political effects; the study moves beyond the question of judicial interpretation of contractual terms to look at the function that those legal devices are thought to perform in the contexts in which they are placed, represented, appropriated, negotiated and even anticipated by the agents. In this vein, Barrera assesses the political spin of legal technicalities by looking into their constitution as mere vehicles of pragmatism while serving a disputable ideological agenda, and thus, they are means to multiple ends.

In Chap. 12, Pompeu Casanovas, Víctor Rodríguez-Doncel and Jorge González-Conejero explore the new boundaries of the intersection between pragmatics and artificial intelligence, focusing on the concepts Semantic Web, Web of Data and regulatory models, and inquiring about their relations with the law. Firstly, they describe the languages of the Semantic Web and show how the perspective of the Web of Services and Linked Data is related to the conditions under which services can be offered, managed and used. Secondly, they show that the nature of law is experiencing a deep transformation in the cloud. What links the information flow, social intelligence, rights management and modelling in the Web of Data is the pragmatic approach – what we call the pragmatic turn – the representation of users' needs and contexts to facilitate the automated interactive and collective management of knowledge. The Web of Data brings about new challenges in agency, knowledge, communication and the coordination of actions; it calls for a new regulatory and institutional design.

Finally, the third part of this volume, *Pragmatics and Legal Adjudication*, embraces six essays devoted to various aspects of legal adjudication and its pragmatic analysis. The first (Chap. 13) is about the role of legal adjudication within legal practice. It deals with the relationship between legislative and judicial lawmaking and how both are grounded on judicial customs. The other five essays analyse more specific problems of legal adjudications – both original issues such as the weight of pragmatic disorders within the prisons' population and how they can hin-

der the wide range of interactions that take place from arrest to conviction and imprisonment (Chap. 14) – and more traditional epistemic problems such as the role of stereotypes in judicial decisions (Chap. 15), and testimony (Chaps. 16 and 17).

In Chap. 13, Mauro Barberis challenges some common views about legal sources (in particular the relationship between legislation and adjudication). He lays the foundations of a realistic, pragmatic and inferentialist theory of law in which Anglo-American precedents and European-continental jurisprudence play an important role as self-restraining devices emerging from the working of adjudication itself. Historically, legislation was designed to remedy arbitrariness in adjudication; after two centuries, however, the cure proved to be worse than the disease. Today, statutes are less a restraint than a tool for judicial interpretation, and the latter, paradoxically enough, is converted into the last remedy to the darkness of legislation.

In Chap. 14, Louise Cummings bring us into the dark world of mental illness. First, she shows that there is a sizeable burden of pragmatic disorder in the prison population. Second, she enquires as to what implications, if any, this has for those pragmatically impaired individuals who are in the criminal justice system. From the point of arrest to conviction and imprisonment, incarcerated individuals must negotiate a range of verbally mediated interactions. Through a careful analysis of some of these interactions (police interviews, courtroom examinations and prison rehabilitation programs), Cummings demonstrates that they exceed the pragmatic language capacities of incarcerated individuals. Some of the specific pragmatic features of these interactions pose significant and, in some cases, insurmountable difficulties for clients with pragmatic disorder. Finally, it is argued that a much greater level of priority must be afforded to the assessment and treatment of pragmatic disorders in forensic settings than has been the case to date.

In Chap. 15, Federico José Arena develops a deep analysis of stereotypes and their function in legal decision-making. Stereotypes are a kind of social categorization that plays a fundamental role in social interactions as a mechanism to form expectations about people's behaviours and attitudes. Their use, however, is not free of controversy; social categories are closely related to sensible issues such as individual auto perception, identity construction and discriminations. Therefore, in legal domain, it often is claimed that judges should avoid or contrast the negative effects of social categorizations. It is not easy to determine, however, if all stereotypes should be avoided or if, instead, some of them are inevitable or valuable and therefore acceptable or mandatory uses of stereotypes. Arena shows that some of these difficulties arise because the term *stereotype* has heterogenic uses. Therefore through accurate analytical distinctions, he highlights different roles of different stereotypes in judicial reasoning.

In Chap. 16, Sune Sønderberg Mortensen and Janus Mortensen undertake a refined analysis of courtroom interactions. This sort of analysis pertains to a well-established scientific genre which has seen contributions from a range of disciplines, including conversational analysis, interactional sociolinguistics, pragmatics, corpus linguistics, semantics and rhetorical studies. The authors focus on epistemic issues. After a deep discussion of the linguistic expressions of certainty and uncertainty, the so-called epistemic stance markers and their features and roles in

communicative interactions, the authors enquire how they are used by participants during examinations in a recent Danish criminal trial (which was audio recorded). Although the investigation concerns Danish linguistic expressions (always translated in the text), its results are of interest for the innovative theoretical and methodological approach and seem generalizable to a wide range of other languages, thus marking an important step in the progress of forensic linguistics.

Last but not least, in Chap. 17, Florencia Rimoldi and Hernan Bouvier address some platitudes surrounding the epistemology of testimony in legal domain by taking into account how epistemology explains the different but related phenomenon of forming beliefs based on the words of others. Although there is no agreement between epistemologists about how does testimony obtain its epistemic import in the case of human cognisans, the authors propose that some accounts fit better to explain theoretically the legal practice. For that purpose they explore sophisticated discussions belonging to the philosophy of testimony, among them, reductionism, universalism and interpersonal views of testimony. Resorting to what it is called a doxastic approach, they aim to demonstrate that epistemological assumptions in the legal field regarding testimony cannot be held together especially because of some pragmatic implications involved in the way jurists treat that kind of evidence. The authors focused on the considerations regarding the case of three types of witnesses: single, expert and eyewitnesses.

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# Contents

The original version of this book was revised. An erratum to this book can be found at DOI 10.1007/978-3-319-44601-1_18

# Part I
# Pragmatics and Legal Interpretation

# Slippery Meaning and Accountability

**Kasia M. Jaszczolt**

**Abstract** In his 'Fishy business', Mark Sainsbury (Analysis 74:3–5, 2014) presents a puzzle: in order to have a *substantive disagreement*, one has to first agree on the meaning of a proposition that is the object of this disagreement. Now, since before Linnaeus' classification the criteria for counting as 'fish' were such that they allowed for the inclusion of whales, while the new classification (1758) excludes them, a substantive disagreement ought not to arise across these two. And yet, in a court case from 1818 he refers to, the judges did not dismiss the disagreement on semantic grounds. They proclaimed whales to count as fish, and, according to Sainsbury, we, the readers, are equally able to reach a verdict in that we would proclaim the jury to be wrong. The question I address in this paper is a metasemantic one, namely what should count as meaning of expressions for the purpose of theoretical inquiry. I point out that truth-conditional analysis of meaning increasingly makes use of pragmatically derived interpretations in radical versions of contextualism and that this pragmatization of meaning is supported by the increasingly common philosophical stance on reference according to which reference is to be pursued on the level of cognitive mechanisms rather than types of noun phrases. It is in this milieu that I analyse the cognitive construct of the primary meaning of an utterance that corresponds to the intended and recovered meaning in a model situation, derived here by employing the sources of information and processes identified in Default Semantics. I demonstrate through selected examples that any attempts to regiment meaning by using the explicit/implicit distinction, directly-referential/contextually-referential, or indexical/nonindexical distinction do not yield the primary meaning intended and recovered in linguistic interaction. As a result, the question of accountability arises: if the primary meaning can be implicit, context-driven and multidimensional, then is it this meaning that the speaker should be accountable for? If so, we need a normative theory that would predict such meanings. If not, then we would have to make the speaker accountable for some content that is not intended. I propose that a normative, radical contextualist account that places meaning on the level of a conceptual structure, while at the same time preserving the truth-conditional method of analysis, acts in favour of this accountability on the grounds of primary,

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F. Poggi, A. Capone (eds.), *Pragmatics and Law*, Perspectives in Pragmatics, Philosophy & Psychology 10, DOI 10.1007/978-3-319-44601-1_1

intended meaning, irrespective of its explicit or implicit status. I tentatively conclude by pointing out one obvious corollary, namely that this pragmatization of meaning affects both sides of language in the courtroom but not to the same degree: the relevant law cannot have a *communicative* rather than *textual* content beyond certain limitations imposed on the generalizations over admissible contexts, while the primary content of the plaintiff's and the defendant's contributions, firmly situated in the co-constructed context, can easily cross the explicit/implicit boundary.

**Keywords** Accountability • Contextualism • Default Semantics • Maurice v Judd case • Merger representation • Metasemantics • Primary meaning • Salience-based contextualism • Salient meanings • Substantive disagreement

## 1 Fish Oil and Metasemantics

In his 'Fishy business', Mark Sainsbury (2014) discusses a court case that took place in New York in 1818 and concerned the meaning of the term 'fish oil'.[1] A fee was requested for 'gauging, inspecting and branding' caskets of fish oil – refused by the defendant on the grounds that the oil in question came from spermaceti whales and as such does not qualify as 'fish oil'. The verdict presents a theoretical puzzle concerning the so-called *substantive disagreement*: in order to have a substantive disagreement, the parties have to first agree on the meaning of a proposition that is the object of this disagreement. Since before Linnaeus' new classification (1758) the criteria for counting as 'fish' were such that they allowed for the inclusion of whales, while the new classification excludes them, a substantive disagreement ought not to have arisen across these two. And yet, in the court case Sainsbury refers to, the judges did not dismiss the disagreement on semantic grounds. They proclaimed whales to count as fish. Moreover, according to Sainsbury, we, the readers, are equally able to reach a verdict in that we would proclaim the jury to be wrong – a claim which I inspect more carefully in the course of the discussion.

Sainsbury (2014: 5) concludes with a tongue-in-cheek but at the same time perspicacious comment:

> There is something paradoxical about fish. An adequate resolution will require carefully formulated metasemantic principles

The question I address in this paper is precisely a metasemantic one, but my objectives are considerably different from those of Sainsbury's. Instead of focusing on knowledge attributions, I ask a more general question, namely what should count as meaning of expressions for the purpose of theoretical inquiry. Perhaps predictably, I shall take on board semantic contextualism, as distinguished from, say, contextualism about knowledge attributions (e.g. Blome-Tillmann 2013, 2014; Lutz 2014),

[1] 'Maurice v Judd', see Historical Society of the New York Courts, http://www.nycourts.gov/history/legal-history-new-york/legal-history-eras-02/history-new-york-legal-eras-maurice-judd.html

and in particular the question of the extent to which pragmatics can shape the primary intended message that becomes the object of such courtroom judgements. Are there clear principles that can/ought to be discerned and implemented for judging such difficult cases? More generally, what principles, if any, do interlocutors adopt in order to establish the primary message on the basis of which the truth or falsity of the statement ought to be assessed? Do indirect forms of communicating information that are so frequent in our everyday discourse qualify as providers of such primary, truth-evaluable meanings to be assessed as true or false and, on the above scenario, to constitute the basis for courtroom verdicts?

There are different ways of approaching this set of questions, and these ways come with their different methods of inquiry. First, one could go empirical and compile a database of pertinent court cases, investigate the extent to which what the defendants and the witnesses 'said' was modified as compared with the minimal content of the sentence as it is understood in semantic minimalism, preferably of the propositional variety (Borg 2004, 2012; Cappelen and Lepore 2005), and produce a generalization over what the parties involved in the case judge to be the content of the speech act that plays a role in reaching the verdict. But this method is not very reliable in that there is no doubt that a variety of meanings is bound to be conveyed. Next, we can go empirical and try to establish how interlocutors understand the concept of the main conveyed message, utilising a questionnaire method. This has already been attempted, with the suitable attention paid to the instructions that variously do, or do not, mention the term 'what is said' as opposed to, say, 'the main communicated message'.[2] The result of these studies clearly indicates that addressees discern the main message, what the speaker mainly said, conveyed, intentionally communicated, and so forth, equally well, independently of the association of the content with the logical form of the uttered sentence. In other words, the main message can be communicated (i) directly in virtue of the sentence content alone; (ii) directly in virtue of the sentence, enriched with the effect of pragmatic processing or some default inferences; or (iii) indirectly. All three formats are equally accessible to the addressees. In other words again, what is psychologically real is not the distinction between the meaning communicated via the sentence structure and the meaning communicated pragmatically, but rather the primary as opposed to the secondary meaning – the first being either explicit or implicit.

I have written at length on the primary/secondary meaning distinction being orthogonal to the explicit/implicit one elsewhere and will not be concerned with these arguments directly in what follows.[3] Instead, let us continue with the list of available methods of enquiry. One can go empirical again, embark on a project in the neuroscience of language, and test brain activation pertaining to (i–iii) above. But this would be premature: finding brain correlates of linguistic processes in patterns of neuronal activation, or correlates of representations we form in response to acts of linguistic communication in neuronal structures is not what we are able to

[2] See e.g. Nicolle and Clark 1999; Pitts 2005; Schneider 2009.

[3] See e.g. Jaszczolt 2005, 2010, and 2016, and in particular the argument from cancellability in Jaszczolt 2009a.

reliably do. Neuronal structures and patterns of neuronal activation remain a long shot from an explanatorily adequate theory of meaning.[4]

Leaving empirical methods aside, let us consider conceptual analysis. As Sainsbury rightly observes, we have a metasemantic problem here and the most obvious method to tackle it in the first place is theoretical argumentation that takes on board the semantics/pragmatics boundary, and in particular the suitability of semantic minimalism vis-à-vis contextualism about meaning for handling the question as to *what kind of meaning* ought to count. Now, 'what kind of meaning ought to count' is still too vague as the object of enquiry. After all, the meaning that counts in courtroom verdicts need not be the same as the meaning that ought to be regarded as the object of semantic analysis. Whether it is or not largely depends on the strength and quality of argumentation on the semantics/pragmatics divide, and thus on the selected assumptions. Moreover, the meaning that ought to be agreed on as the object of semantics need not necessarily be the same beast and the meaning that undergoes the truth-conditional analysis. After all, semantics may be considered minimal, founded on the structure of the sentence, and not even falling prey to propositionalism in that not all complete sentences express complete propositions (Bach, e.g. 2004, 2006); or contextualism about meaning can be so construed that truth-conditional analysis takes as its object the meaning that exceeds the scope of semantics: pragmatic modifications ('enrichments', 'modulations', and so forth) are not structure-driven and as such fall outside the domain of semantics while having their rightful place in the proposition expressed (Recanati, e.g. 2010, 2012a, b).[5] So, in order to proceed with our question we have to make one methodological assumption. We have to assume that semantic theory ought to deal with intuitive meanings, that is, with the meanings that are intended by the speakers, and, if all goes well, also recovered by addressees,[6] as the *main intended message*. We also have to make a choice of the method for semantic analysis (not to be confused with the method for our current *metasemantic* analysis). Our choice is to adopt the truth-conditional method in that truth conditions offer the most successful tool to date for providing a formalizable, explanatorily adequate theory of meaning. While traditionally, in Montagovian semantics, they tended to go together with the sentence-based object of enquiry and formal models, since the late 1980s approaches within dynamic semantics have opened up the possibility of incorporating more and more pragmatically derived meaning into the proposition to which truth conditions are applied.[7] Model theory and possible worlds follow suit as essential aspects of this analysis. The theory we will end up adopting here constitutes a further, arguably the most radical, step in this history of pragmatization of truth-conditional semantics – the

[4] For a discussion of the aims of the neuroscience of language see Pulvermüller 2010.

[5] Cf.: "On this issue I am happy to part company with the most radical contextualists – the 'sceptics' who would go for the holistic guesswork answer (…). Like Stanley and the formal semanticists, I maintain that semantic interpretation is grammar-driven." Recanati (2012a: 148).

[6] As I argue at length elsewhere (Jaszczolt 2005, 2010, 2016), miscommunication is not the topic for semantic theory but rather for applied linguistics.

[7] See e.g. Kamp and Reyle 1993; Groenendijk and Stokhof 1991; van der Sandt 1992, 2012.

most radical in that it marries the methods of formal semantic analysis with the object of study that may have a very loose connection with the syntactic structure of the uttered sentence. This object of study is the speech act that conveys the main intended message – be it directly or indirectly, as long as it is conveyed sufficiently strongly and unambiguously to be grasped without doubt as what was intended.

## 2 On Types of Semantic Content: A Sketch

We have answered one of our initial questions by a stipulation: the meaning that our semantic theory takes as its object is the meaning intended by the speaker and recovered by the addressee, with the proviso that all goes well in assuming at one end, and recovering at the other, the background that allows the interlocutors to leave some aspects of the message unsaid. In Default Semantics that we will end up adopting for this purpose (Jaszczolt 2005, 2010), this is called a Model Speaker/Model Addressee meaning. This construal also allows us to overcome a rather unproductive discussion that keeps appearing in the post-Gricean literature addressing the question as to whether speaker's meaning or addressee's meaning ought to be *the* meaning that is represented by the theory. To repeat, we leave such questions to psychological studies within applied linguistics.

The core question, however, remains and cannot be set by methodological or theoretical stipulations. It concerns the kinds of contributions that context makes to this richly, contextually construed truth-conditional representation. At first blush, we have three qualitatively different 'levels' of meaning that are all good candidates for primary meanings. These are (a) minimal sentence meaning; (b) expanded/modulated sentence meaning; and (c) implicatures. The first two have been well discussed in the post-Gricean tradition, where, arguably, the dominant view is that context always has to be consulted in construing the truth-conditional representation, and as such the expanded meaning is the standard case, with the minimal sentence meaning being a special one in that it is only an accidental feature of a given discourse that no enrichment or other modifications were needed. In other words, Recanati's (e.g. 1989, 2012c) *what is said* or the relevance-theoretic *explicature* (e.g. Sperber and Wilson 1995, 2012; Carston 1988, 2002) that constitute the developments of the logical form of the sentence have become the focus of attention and the locus from which the enquiry into the types of modifications that produce them sprang out. But it has also been extensively argued, mostly in the late-Wittgensteinian speech-act tradition, that the correct object of study for a theory of meaning is not some in-between construct that cannot be analysed by appealing to the study of the language system alone (lexicon and syntax) or, on the other hand, may not pertain to the main, strongly communicated message either. For example, in (1), it is not the extended sentence meaning in (1a) that is predominantly communicated but rather the implicature that can be formulated as in (1b) or (1c).

(1) A little boy to his mother:
Everybody has an iPhone 6. (minimal proposition)

(1a) Everybody in the boy's class has an iPhone 6. (enriched proposition)
(1b) The boy is asking his mother to buy him an iPhone 6. (implicature)
(1c) Please buy me an iPhone 6. (implicature)

It is this primary meaning that will be subjected to the truth-conditional analysis, following our initial stipulation that the objective is to model the main intended message.

In short, we admit (a) sentence meaning, (b) the pragmatically modified sentence meaning, and (c) the indirect meaning that the uttered sentence produces in the given context as equally legitimate objects of the truth-conditional analysis. Naturally, this radically pragmatic approach comes with a radical reanalysis of the level at which compositionality is to be sought, the way in which this compositionality of meaning is achieved (again, on the assumption that a semantic theory requires compositionality as its fundamental methodological assumption). These issues have been dealt with at length elsewhere throughout the development of Default Semantics (henceforth DS, Jaszczolt, e.g. 2005, 2009b, 2010, 2016). For our purpose at this point in the argument we shall simply adopt the DS-theoretic tenet that the representation of intended meaning draws on various linguistic and extralinguistic sources of information and all these sources are treated on an equal footing, producing as a result a compositional representation where compositionality is predicated of the level at which the outputs of these sources merge (the so-called *merger representation*). These sources come with corresponding processes that contribute to the construction (and reconstruction) of the intended meaning – to repeat, assuming our Model Speaker – Model Addressee communication. A more detailed discussion of the sources and processes identified in DS will become pertinent in Sect. 5 when we provide a merger representation for the 'fish oil' example.

What remains unresolved in DS is how exactly lexical meaning fares in this multidimensional,[8] radically context-driven semantics. This is the question that will permeate the current discussion. So, having adopted the primary meanings that are free from the constraints of the logical form of the sentence, as exemplified in (1), we will now focus on this additional problem of what exactly, in the case of word meaning, can be attributed to those various sources and processes, and what remains the core of the lexical meaning. Compounds such as 'fish oil' from our earlier courtroom example are relatively unproblematic. On the one hand, standard definitions are anatomy-based: "Fish oil is oil derived from the tissues of oily fish" and "Fatty predatory fish like sharks, swordfish, tilefish, and albacore tuna may be high in

[8] The term 'multidimensional' has been used in many different ways in semantics. In the current approach we are using it to mean the variety of sources and processes that contribute to the final representation.

omega-3 fatty acids".[9] However, looked at from the perspective of language change, there is no reason to assume that Linnaeus' reclassification of whales as mammals carries across to compounds with an immediate effect; compounds have a life of their own in the history of the language. This observation is worth mentioning at this juncture because it would be too simplistic to assume that the jury's verdict in favour of the plaintiff (namely, that payment for inspecting three casks of 'fish oil' is due) can be traced merely to the considerations to do with the context, purpose or function, or, in other words, with putting the merchants' perspective above the anatomists' one. Compounds do have a life of their own, a 'blackboard' did not become a 'greenboard' (when the colour started varying within the range on which white chalk could still be used) before being replaced by 'whiteboard'; the replacement was instead driven by the more distinctive properties of the new piece of classroom equipment. After all, compounding means "combining two (or more) existing words into a new word" (Trask 1996: 30) and a new word can lead a life independent of the history of word-formation; internal compositionality is compromised at this point to some, smaller or greater, degree.[10]

In short, cases such as our 'fish oil' debate can occur for different reasons. They can occur because (i) there is a discrepancy between various considerations that have an impact on the meaning, such as, say, (i.a) a merchant's vs. an anatomist's perspective, or to give another example, (i.b) a functional vs. a perception-based one. The latter is evident when we refer to, say, an artistically designed functional object – for example an armchair in the shape of a large soft toy, a teapot in the shape of a pear, and so forth. The second reason can pertain to (ii) the compromised compositionality of a compound and the different diachronic path it adopts as compared with its constituent words, as discussed earlier in this section. Both considerations can be instrumental in the ascription of the primary communicated meaning to the speaker. *Nota bene*, only (i.a) and (i.b) require a contextualist perspective in that (ii) incorporates the non-compositional meaning of 'fish oil' in the minimal lexical content.

We have discussed so far three qualitatively different cases of the departure of the semantic content, as it is understood in radical contextualism of DS, from the minimal meaning of the uttered sentence: [1] enrichment/modulation of the minimal proposition; [2] replacement of the uttered proposition with the indirectly but strongly communicated primary meaning (an implicature), and [3] context-driven interpretation of an utterance that does not require enrichment but would, without this context or adopted perspective, remain either ambiguous, or underdetermined, or taken to mean what was not intended. Case [3] is instantiated by our 'fish oil' example on the (i.a) scenario (to repeat, the reason (ii) above does not necessitate a departure from the minimal content). Without adopting a contextualist outlook, the 'fish oil' scenario would be likely to produce the minimal meaning that is not

[9] Wikipedia, https://www.google.co.uk/?gws_rd=ssl#q=fish+oil

[10] It is generally acknowledged that the written form as one word (hyphenated or not) or two words is semantically irrelevant in English as long as the construct counts as a compound for morphological and semantic purposes.

intended – the meaning that was given in our earlier definition, "fish oil is oil derived from the tissues of oily fish". However, other examples falling into this category may produce instead semantic underdetermination or ambiguity. For example, the often discussed case of referent shift in (2) or (3) yield, so to speak, 'the wrong meaning' when viewed in the minimalist perspective.[11]

(2) Putnam is on the top shelf.
(3) The chicken burger left you a tip.

Needless to say, in contextualist perspective, they become (2a) and (3a).

(2a) The book(s) by Putnam are on the top shelf.
(3a) The person who ordered a chicken burger left you a tip.

We have presented here some examples of the scenarios that produce 'wrong meanings' and underdetermination as sub-categories of [3]. The final sub-category is that of an ambiguity.[12] Examples are equally easy to attest in that they constitute simple cases of lexical (4) or structural (5) ambiguity which, without the help of context, remain such.

(4) I want to design a pen.
(5) An intelligent student's essay was the topic of discussion at lunch.

Syntactic and lexical ambiguities are normally easy to resolve – we can agree with Kaplan (1989a, b) that they are pre-semantic, in that disambiguation is mandatory in order to proceed with any truth-conditional analysis. Moreover, they do not arise as ambiguities in processing: they only arise when the speaker's assumptions are not well adjusted to match the addressee's background information. Underdetermination and 'wrong meaning', however, are likely to lead to debates concerning the literal/nonliteral distinction and, as a moral corollary, also to discussions concerning speaker's accountability. Do speakers take responsibility for the strongly communicated meaning where the latter can have different provenance and display different degrees of reliance on the literal? Or are they accountable for the literal content?

Here we can register help from a supplementary argument: a yes/no answer to the latter question would have to presuppose that, on the metasemantic level, the literal/nonliteral distinction can be discerned.[13] But can it? Firstly, there are different

[11] See also Recanati, e.g. 2004, 2005 and 2012b on the literal/nonliteral distinction.

[12] 'Wrong meaning', 'underdetermination' and 'ambiguity' are labels that can be assigned when we ask the question as to what the addressee would obtain in principle if no context were given. As such, they are quite loosely attached labels and it has to be remembered that from the point of view of a formal semantic analysis all three can be placed in the same category – computational linguists would prefer the 'ambiguity' label here (see e.g. Lepore and Stone 2015), while relevance theorists who adopt and liberally apply psychologism, opt for underdetermination.

[13] This question is particularly pertinent with reference to language that causes offence, such as the use of slurs. See Sileo 2015.

ways of defining literality: with respect to departures from the minimal content, with respect to departures that are felt and consciously accepted as departures (at least *post hoc*, in a reflective process), to mention the basic two.[14] Cognitive linguistics certainly gives us strong reasons for classifying metaphorical expressions that pertain to standard metaphorical schemas as literal: they are not *felt* as non-literal and they are productive. Having a 'full life', an 'empty life', 'getting the most out of life', or 'living one's life to the fullest' are all said to exemplify the conceptual schema LIFE IS A CONTAINER (Lakoff and Johnson 1980: 51). Regardless of the cognitive status we wish to afford such schemas (and this will depend either on theoretical assumptions or on the assessment of evidence), the feeling of literalness of such expressions is a strong one, and, arguably, becomes even stronger in the cases of clear embodiment ('I am feeling up') or further progressing standardisation ('Don't waste my time').[15] All in all, the case for accountability for literal meaning looks feeble indeed. We can now intentionally misquote Sainsbury (2014: 5): "we think the jury gave the *correct* verdict".

## 3 Accountability Again

Arguably, the state of the art in modelling meaning is this. In addition to the progressing pragmatization of truth-conditional semantics discussed in Sect. 1, dynamic approaches to word meaning currently seem to dominate in semantic literature (see e.g. Asher 2011; Ludlow 2014). This pragmatization of meaning on all fronts, reflected in our types [1–3] above, is also supported by the increasingly common philosophical stance on reference according to which reference is to be pursued on the level of cognitive mechanisms rather than types of noun phrases.[16] It is in this milieu that we are analysing the cognitive construct that we call in DS the primary meaning of an utterance. We have also demonstrated that any attempts to regiment meaning by using the explicit/implicit distinction or the literal/nonliteral distinction do not yield the primary meaning intended and recovered in linguistic interaction. As a result, the question of accountability arises with a new force: if the primary meaning can be implicit, context-driven and multidimensional, then is it this meaning that the speaker should be accountable for? If so, we need a normative theory that would predict such meanings. If not, then we would have to make the speaker accountable for some content that is not intended and that, as Sect. 2 clearly indicated, cannot be discerned – or even *assumed* to be discernible. In this context, I suggest that we need a normative, radical contextualist account that places meaning on the level of a conceptual structure, while at the same time preserving the truth-conditional method of analysis. Evidence from what counts in everyday conversation acts in favour of this accountability on the grounds of primary, intended

[14] See for example Recanati (2004: 78) for an elaborate classification.

[15] See also e.g. Lakoff and Johnson 1999.

[16] See e.g. Hawthorne and Manley 2012; also Soames 2014 on cognitive propositions.

meaning, irrespective of the explicit or implicit status of the latter. DS provides such a radically contextualist framework. But before we turn to an analysis of the 'fish oil' example in DS, it is necessary to address the question of salient interpretations.

## 4 Salience-Based Contextualism

One need not conduct experiments to know that some meanings are recovered fast, others more slowly; some meanings require conscious processing, others do not. We will call the latter *automatic meanings* or *conversational defaults*, following the definition of default meanings adopted in DS according to which they are meanings that arise automatically, without involving a process of pragmatic inference. They are defined for the Model Speaker-Model Addressee pair (or other relevant set of interlocutors) and for the particular situation rather than for a type of linguistic expression. In other words, the definitional characteristic of defaults in DS is their automatic nature rather than a relation to items from the language system – lexical items or structures. A DS-theoretic default is thus a categorically different concept from, say, Levinson's (2000) presumptive meanings that are identified precisely for elements of the language: for Levinson, it is a word or part of the sentence structure that triggers a presumptive meaning – a generalised conversational implicature. Presumptive meanings capture at most strong tendencies in how language (or sometimes *a* language) is used but they come at a cost: they have to be defeasible, and they have to be so quite often. They also come with a speculative principle for their identification: what is it in language use or in the language system that makes us classify the understanding of 'a nanny' as 'a female nanny'? What evidence do we need to postulate a presumptive meaning in the first place, and what evidence does it take to, say, acknowledge that an alleged presumptive meaning no longer holds because society and culture have moved on? Equally, what does it take to demonstrate that exclusive disjunction ('*p* or *q* but not both') is the presumptive meaning of 'or'? These, and many other, foundational as well as descriptive questions remain unanswered there.

Instead, DS emphasises the importance of *salient meanings*. Salient meanings are interesting and not easy to analyse because, as ample experimental evidence convincingly suggests, they can be intended by the speaker or not intended (as long as they, *per se*, are salient to the interlocutors), and they can be literal or nonliteral. There is experimental evidence that meanings that do not constitute the intended content but yet are salient to the interlocutors are in fact activated.[17] As Giora (2003: 33) notes, "[t]he criterion or threshold a meaning has to reach to be considered salient is related only to its accessibility in memory due to such factors as frequency of use or experiential familiarity." Taking this evidence on board, we are justified in proposing that the concept of literalness as it is presented in the current state of

[17] See Giora, e.g. 2003, 2012, Peleg and Giora 2011.

semantics is of a more limited use for a theory of meaning than that of salience: first, as we have argued, there is no single clear literal/nonliteral distinction to rely on, and second, salient meanings easily cross even the most intuitive literal/nonliteral divide. Metaphorical meanings can be more salient than literal as long as they pertain to strongly activated, usually frequently utilised, concepts.

This gives us an option of redefining literality: a meaning is 'literal' *not* because it is not 'figurative' but rather because it is salient and as such activated automatically. This activation can reach a higher or a lower level according to Giora's (2003) Graded Salience Hypothesis but it is intuitively plausible to treat such automatic meanings as literal, in the most natural sense of the term: they do not require conscious processing, they are common, and appear basic.[18] What we gain is a gradable concept of salience that helps explain the non-gradable concept of literalness, preempting the need to choose between a plethora of criteria for the literal/nonliteral distinction.[19] Salience and automaticity will play an important role in our analysis of the 'fish oil' example, as it is an example of meaning that has to be resolved not only with reference to standard contextual parameters[20] but also with reference to function and purpose with which the expression was used.

Salience has an important provenance. It can come from the fact that language is a socio-cultural phenomenon, and as such a dynamic one, constantly created in the process of its use. Or it can come from the fact that language is a cognitive phenomenon and so is dependent on – and as such benefiting from, as well as being restricted by – the structure and operations of the brain. These two sources of salience are formalised in DS as two different types of processes: *cognitive defaults* and *socio-cultural and world-knowledge defaults* respectively. A brief introduction to sources and processes identified in DS is the topic to which we turn in Sect. 5, with an objective in view to provide a merger representation of the jury's verdict in the 'fish oil' case, namely a semantic representation of the meaning that was deemed to be relevant – a representation that will also give some insight (as far as semantic theory requires it) into the processing that produced it.

[18] This view goes beyond Recanati's (2004) definitions of 'literal', where metaphors that do not require conscious processing are regarded as '*p*-literal' and non-figurative, while consciously processed metaphorical expressions are '*p*-literal' and figurative, where '*p*-literal' classifies them as primary meanings.

[19] I discuss this issue in much more detail in Chapter 1 of Jaszczolt 2016, where I dub this form of contextualism *Salience-Based Contextualism*.

[20] According to Kaplan's (1989a) two-dimensional semantics, context is to be defined as a set of all the parameters that are necessary for semantics, such as agent, time, location, and world, with the proviso that more parameters can be added when required.

## 5 Representing Primary Meanings: An Example

Theories of meaning define their object of study in different ways. It goes without saying that when our object of analysis is the main, primary intended meaning of the speaker's utterance, we need to either resort to pragmatics when our semantics was assumed to be minimal, or construe semantic theory in such a way that it can accommodate this object of study independently of how difficult it is to represent – that, is independently of its degree of resemblance to the logical form of the uttered sentence. In the preceding sections I have argued for the latter option, and in particular for the theory that is most radical in this respect, that is DS. In what follows, we will implement it by providing an example of a DS-theoretic merger representation, representing the meaning of an example of utterance that is likely to be encountered in connection with the 'fish oil' court case. In order to do so, it is necessary to start by a brief overview of the sources of information and processes identified in DS that result in the compositional merger representation.

First, merger representation is *assumed* to be compositional, in virtue of a methodological as well as an epistemological assumption: language is systematic and productive and this systematicity and productivity suggest that compositionality of meaning has to be found on some level of analysis of human communication. Attempts in formal semantics to find compositionality in sentence structure have all failed: to make language fully compositional requires bringing in theoretical devices that testify against compositionality in the first place. On the other hand, non-compositional semantics is unthinkable; compositionality of meaning at some level or other is an empirical fact and as such an epistemological assumption about possible human languages. At the very least, it is plausible to assume that compositionality of language – or, better, of communication – supervenes on compositional reality (see e.g. Schiffer 1991; Szabó 2000). Be that as it may, the methodological assumption of a compositional structure at the level of conceptual representations follows as a corollary.

Merger representations, symbolised as Σ for the summation of information coming from different sources, are such compositional conceptual structures, combining information about meaning that comes from (i) world knowledge (WK); (ii) word meaning and sentence structure (WS); (iii) situation of discourse (SD); (iv) properties of the human inferential system (IS); and (v) stereotypes and presumptions about society and culture (SC).[21] While in traditional formal semantic accounts compositionality was sought at the level of the output of WS, in DS, following the adopted radical contextualist orientation, compositionality is predicated of the output to which any of these five sources can contribute. All the sources have equal status, in the sense that they do not simply modify the logical form, that is the output of WS. To repeat, the resulting representation may not be isomorphic to the output

[21] The sources as they are presented here come from the revised version of DS first proposed in Jaszczolt 2009b. The reader is referred there, or Jaszczolt 2010 and 2016, for a detailed account of the sources and processes.

of WS and, in the case of indirectly communicated primary meaning, may not even resemble it structurally; it may exemplify any of the three categories (a–c) distinguished in Sect. 2.[22]

Next, the sources map onto processes that jointly produce a merger representation. It is not always a one-to-one mapping but stable correlations are discernible. WK and SC can give rise to automatic, default interpretations called social, cultural, and world-knowledge defaults (SCWD)[23] or to a conscious process of pragmatic inference (CPI). CPI can also be triggered by SD, and this is where the role of SD is exhausted: it triggers a one-to-one mapping. WS is assumed to require processing that is specialised for language and hence maps onto 'processing of word meaning and sentence structure', also abbreviated as WS.[24] Next, IS results in cognitive defaults (CD) – automatic, default interpretations that rely on the structure and operations of the brain. In Σs, the processes that are responsible for specific contributions to the overall meaning are marked as an index following the closing of a square bracket that contains the relevant unit of conceptual structure. The length of the material in square brackets is not fixed once and for all for a given sentence: just as expressions can adopt different meanings in different contexts, so the processes can operate on different units in different circumstances. For example, in one context a determiner 'some' will lead to an automatic enrichment to 'some but not all' (N.B., to repeat, 'automatic' for the speaker and the context), while in another it will not. In yet another it may lead to a conceptual structure for the primary meaning that does not contain a quantifier at all.[25] The DS-theoretic terminology for this fact is

[22] It has to be borne in mind that some philosophers of language use the term 'logical form' very broadly, in such a way that it is also likely to encompass our merger representation. For example, Stainton (2006: 186) extends the term to non-linguistic means of communication. Since merger representations draw on linguistic as well as non-linguistic sources of information, DS makes a clear distinction between the representation of the meaning of the sentence of the natural language (logical form) and the representation of the primary meaning of an act of communication (merger representation).

[23] The need to incorporate sociocultural considerations in pragmatic theory is now widely recognised, not only in accounts of Generalized Conversational Implicatures (GCIs) and linguistic politeness. See e.g. Ariel (2010: xiv, 212–213).

[24] DS is still a theory in progress and in its current form it is compatible both with modular accounts on which language processing proceeds through specialised, dedicated mechanisms (here captured as WS) and with connectionist models where WS process can be understood as simply reading information from the lexicon and structure, not necessarily using dedicated processing. It has to be remembered in this context that WS reflects the incremental nature of discourse processing and therefore in the process of comprehension the construction of the logical form can be, so to speak, 'interrupted' at various points by the output of other processes that together lead to the merger representation. But details of this process lie beyond the remit of a semantic theory – even a radically contextualist one – and belong with psycholinguistics and neurolinguistics. While it is hoped that the latter will shed light on the construction of merger representations in discourse, the incremental process itself is of no utility to the semantic theory assuming it. In Jaszczolt (2005) I called this idea 'methodological globalism'.

[25] See e.g. 'some people are neurotic' clearly used to mean 'You appear neurotic', or 'Some say he killed his wife and threw her body into a lake' when said to mean 'Rumour has it that he killed his wife and threw her body into a lake'.

that inferential bases and bases for automatic meanings are *flexible* and they correspond to linguistic meanings that are equally flexible – or, using Kaplan's (1989a) content/character distinction, *fluid characters* (Jaszczolt 2012 and 2016).

We are now in a position to employ DS to the analysis of our courtroom scenario from Sect. 1. Let us first stipulate that the offending event can be summarised, from our and from Judd's perspective, in the sentence in (6), quoted form 'Maurice v Judd', after the website of the Historical Society of the New York Courts.[26]

(6) Samuel Judd purchased three barrels of whale oil that had not been inspected.

Let us next stipulate that James Maurice, the tax collector, presents the case as in (7).

(7) Samuel Judd purchased three barrels of fish oil that had not been inspected.

The ensuing verdict supports (7) in a recommendation that can be formulated for our purposes as (8) and is based on the law in (9).

(8) The Court sentences Samuel Judd to paying $75 for failing to have three barrels of fish oil inspected.
(9) Fish oil sold in New York must be gauged, inspected and branded.

Partial merger representations for (6–9) are given in Figs. 1, 2, 3, and 4 respectively.[27]

The language of merger representations uses amended and extended language of Discourse Representation Theory (Kamp and Reyle 1993), adapted for the purpose of a radical contextualist account to handle primary meanings that, to repeat, can substantially depart from the logical form of the sentence. The variables in the first row stand for discourse referents; capital 'Y' marks a plural referent. The following rows contain discourse conditions. The referent pertaining to the proper name is given by processing the name itself (WS) and by the cognitive default associated with the standard referential and presuppositional processing of names – a CD in that it has been extensively argued in DS that this standard reading pertains to the high degree of informativeness and high intentionality that is assumed of human communication and of human mental states respectively. Next, in the second condition, Y is given by WS and CD in that information comes from the description (WS, 'barrels of whale oil') but the collective reading is derived from the tendency to read plural referents collectively (CD). The next row specifies the cardinality of Y given in the sentence, and thus by WS. The fourth condition relies on the theory of tem-

[26] http://www.nycourts.gov/history/legal-history-new-york/legal-history-eras-02/history-new-york-legal-eras-maurice-judd.html

[27] 'Partial' in that the detailed representation of the aspects of the conceptual structure that are not directly relevant to the presented issue are omitted.