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On Cost-Benefit Analysis and the Meta-Rule of Legal Interpretation

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Abstract: ***Theories of legal interpretation have reached relative maturity at the methodological level. Yet the operational meta-rule governing the use and selection of interpretive methods remains unresolved. In recent years, the rise of socio-legal scholarship has forcefully challenged this issue, arguing that legal interpretive theory itself is incapable of providing an adequate answer. By introducing the economic logic of cost-benefit analysis and incorporating consequentialist considerations, socio-legal scholars propose an economically grounded meta-rule of interpretation. However, they may suffer from several difficulties. On one hand, it must deal with quantity problem, the theory cannot formulate specific, unified criteria, explain morality problem. On the other hand, they ignored two component structural of normative reason, and why we should take normative reason seriously. For these reasons, cost-benefit analysis cannot plausibly serve as the meta-rule of legal interpretation.***

Keywords: Cost-Benefit Analysis, Legal Interpretation, Meta-Rule, Incommensurability.

1. Introduction

Since the interpretive turn in Western jurisprudence, Chinese scholarship on legal interpretation has produced a substantial body of work. The field, however, has not developed in a linear fashion. Around the 1990s, studies of legal interpretation flourished, and the reception of philosophical hermeneutics supplied powerful theoretical resources and intellectual support. For a time, legal interpretation became a highly visible and influential area within jurisprudence [1]. In the past decade or so, by contrast, the discipline has shown signs of ebbing.

One major reason is that a meta-problem hovering over interpretive theory has not been satisfactorily resolved: how should judges use and choose among interpretive methods? This is a foundational question for both the completeness of interpretive theory and the legitimacy of judicial adjudication. Radbruch observed that legal interpretation can attain methodological significance only if it develops a set of meta-rules specifying which interpretive method should be chosen under which conditions.

Yet, alongside a gradual "retreat of normativity" in adjudication and the broader ascendancy of modern science, the fast-growing socio-legal approach has increasingly refused to believe that interpretive theory itself can answer this question [2]. It therefore advances a socio-legal version of interpretive meta-rules. On this account, legal interpretation is grounded in a utilitarian appraisal of social consequences, and the selection of interpretive methods is a strategic action guided by the economic logic of cost–benefit analysis. Whether this line of argument possesses genuinely global persuasive force remains open to careful scrutiny.

2. Skepticism from Socio-Legal Scholarship

For a long time, Chinese interpretive scholarship has focused on method-level debates: for example, the tools of textual interpretation and the limits of purposive interpretation. Attention to the meta-question has been comparatively thin. As a result, the meta-question has not received a satisfactory answer, that fueling socio-legal skepticism about the efficacy of interpretive theory. After pointing to the inherent defects of various interpretive methods (for example, the synchronic and diachronic shifts of language faced by literal interpretation; the possibility of "intent" being formed and identified for intentionalism; and the problem of defining the scope of contextual interpretation), socio-legal scholars argue that even if we acknowledge the value of the existing methods, we still cannot reach a constructive conclusion about the meta-rule for choosing among them [3]. The absence of such a meta-rule, they insist, deprives interpretive theory of methodological significance, forcing it toward a "tragic" endpoint.

It must be noted that mainstream interpretive theory has in fact formed a rough consensus regarding a priority structure among interpretive methods: Where the conditions for a semantic claim are sufficiently satisfied, semantic interpretation should prevail over other considerations; Only where there are reasons to reasonably doubt the conclusion produced by semantic interpretation may the interpreter turn to systematic interpretation; Only if neither of the first two approaches yields an acceptable conclusion may purposive or value-oriented considerations be invoked [4].

Objectively speaking, this ordering conforms to a widely held ideal of judicial neutrality and rational restraint. At a minimum, it reflects a commitment to legal certainty, stability, and predictability; respect for formal legality and legal authority; and a measured attitude toward judicial discretion.

Socio-legal scholarship, however, argues that this seemingly comprehensive meta-rule often proves practically ineffective in adjudication. In rapidly changing social, political, and economic environments, the contingent link between facts and applicable rules is frequently disrupted. Judges, it is argued, cannot decide all cases by mechanically following a "cookbook" hierarchy. Precisely in light of this, Sang Benqian observes that while an ordered sequence of interpretive methods may embody a judicial aspiration toward formal rationality, it ultimately fails to provide methodological guidance in hard cases. Ordering alone cannot answer the key question: under what conditions may a later-ranked method displace an earlier-ranked one [5]?

In hard cases, the difficulty does not lie in formal rationality alone, but in the dilemma generated by conflict between formal and substantive rationality. This cannot be resolved merely by a procedural ordering. It is not a purely intellectual puzzle; it is a composite problem requiring the intervention of practical reason. Judges must balance multiple relevant factors both internal and external to law, attending simultaneously to legal rules and to the concrete circumstances of the individual case. In this sense, adjudication in hard cases is less a matter of "faithful" interpretation of a legal text than a form of strategic problem-solving.

Once legal interpretation is characterized as strategic behavior, socio-legal scholars claim that utilitarian thinking—and the basic economic logic of cost–benefit analysis—becomes the only viable option for resolving hard cases. Judges are said to forecast and compare the social consequences of different interpretive approaches and then choose the path with the lowest cost and greatest benefit. Yet under rule-of-law ideology, judicial behavior cannot openly present itself as utilitarian calculation. Judges must therefore cloak cost–benefit balancing in the idealized language of legal technique. Only after being "dressed up" as legal reasons can an explicitly economic line of thinking be written into a judgment. In other words, on the socio-legal view, adjudication is a process in which relevant determinants are first weighed in utilitarian terms and then rationalized in legal form. Su Li accordingly suggests that once we acknowledge this "hidden secret" of adjudication, legal methods are, at most, rhetorical embellishments and post hoc rationalizations applied after a conclusion has already been reached on the basis of extra-legal factors and value judgments—an accommodation to an overly idealized rule-of-law ideology [6].

In sum, socio-legal scholarship treats the "meta-rule" not as a formally ordered trial-and-error sequence (try method A; if it fails, move to method B), and not even as a rule in the strict normative sense. Lacking prescriptive force, it is at most a guide rather than a binding norm. For socio-legal scholars, the interpretive meta-rule in hard cases is a consequence-oriented choice aimed at maximizing expected benefits.

3. A Genealogy of Skepticism

The socio-legal approach to interpretive meta-rules will not sound unfamiliar to anyone acquainted with jurisprudential traditions. Its emphasis on social consequences and on economic tools of cost–benefit analysis largely descends from legal realism and pragmatic jurisprudence.

Before the twentieth century, jurisprudence was often immersed in code-worship, a "heaven of concepts," and the illusion of judges as faithful executors of law. Law was imagined as a closed and perfect system composed of rules, principles, and concepts. Judges were thought merely to state and apply law, not to create it; adjudication was reduced to repeated syllogism; and the solutions to real-world problems were assumed to be fully pre-inscribed in legal texts. Under the combined impact of philosophical pragmatism, instrumentalism, and economic determinism, legal realism emerged and shattered these grand images.

In the early twentieth century, legal theory manifested unprecedented skepticism toward rules, principles, and deductive logic, and shifted its attention to the goals and interests behind legal rules. Law was demoted from an autonomous normative order to a tool and instrument for achieving ends. Holmes famously urged that law be understood in terms of its purposes and its practical operation; adjudication, on this view, is driven less by formal logic than by the balancing of conflicting social interests and by judgments about policy [7]. Pound likewise conceived jurisprudence as a kind of social engineering, criticizing mechanical jurisprudence while affirming the centrality of social ends [8]. Llewellyn portrayed law as an instrument for ordering human conduct and fostering acceptable patterns of behavior, insisting that law's value can be assessed only by studying how it operates in society and what effects it produces. From this standpoint, what matters is not law "in books," but the behavior of officials and the reactions of the public; in a well-known formulation, the actions of officials in handling disputes constitute law itself [9].

Once legal concepts and legal rules are treated as instruments for social purposes, adjudication is oriented not toward mere description but toward normatively significant ends. The judicial process is not pure logical inference; it is accompanied by attention to consequences and comparative assessments of social interests [10]. This emphasis on ends and interests naturally leads realists to prefer empirical and practical methods. They assume that value questions in the implementation of law can largely be transformed into factual questions. When a case arises, a judge identifies the relevant needs and interests, translates them into feasible objectives, and then evaluates the consequences and side effects of available means so that rational calculation can guide legal action.

In its historical context, the realist instrumental attitude toward law represented a form of progress. Legal theory and practice had long been trapped in formalist routines — evaluating law and deciding cases primarily by conformity to past legal arrangements while neglecting whether desirable outcomes could be achieved. Over time, this produced rigidity ill-suited to rapid social change. Even if realism attracted significant criticism, its attention to concrete social objectives arguably helped law and jurisprudence avoid stagnation and enhanced law's capacity to evolve.

If legal realism offered the blueprint, contemporary law and economics has been a principal practitioner that refines, applies, and operationalizes this framework in legal analysis. It posits that participants in a legal system are rational actors seeking to maximize their utilities [11]. Posner and others imported the Coase theorem and deployed economic analysis to examine legal subjects, conduct, and institutions in a comprehensive manner. Their analytic path stems from the realist instrumentality premise: using the cost–benefit formula as method and wealth maximization as orientation, they test whether law effectively achieves social objectives under varying conditions.

The contribution of law and economics is often described as providing an antidote to the long-standing confusion and dispute in modern legal theory over the question of what ends

law should pursue. It claims that legal problems can be translated into cost–benefit analysis to determine solutions. Through precise and repeatable calculation, it purports not only to point adjudication in hard cases toward the "right" direction, but also to preserve objectivity and predictability. Realists stressed the importance of ends, but their analytic capacity in concrete cases, it is said, could not match the clarity promised by economic logic. In this respect, law and economics appears as the decisive instrument that makes realists' "law-as-tool" program practically workable — echoing Holmes's prediction that future legal study would belong to those who analyze data and to economic experts.

Socio-legal critiques of interpretive methods inherit much from realism and law and economics. They argue that adjudication is fundamentally consequence-oriented, and that existing legal rules and interpretive hierarchies designed to promote formal rationality play, at most, participatory rather than determinative roles. In particular, where formal and substantive rationality conflict, only economic analysis of costs and benefits can decide the result. Hence, as some realists suggest, the interpretive process is, in substance, one in which outcomes are first determined by a prior utilitarian logic and only then presented in the language of legal method [12].

4. The Palmer Case

The Palmer case is the battle field of legal interpretation theory. The basic facts are as follows. In 1882, in New York, Elmer Palmer murdered his grandfather in order to prevent him from revising a will that named Palmer as beneficiary. The grandfather's remarriage prompted Palmer to fear that he would be disinherited; he therefore poisoned the testator. After the murder, Palmer was convicted and imprisoned. A dispute nevertheless arose over the execution of the will. Palmer's two aunts—second in line under the will—sued the executor, arguing that Palmer had forfeited his right to inherit by murdering the testator. The difficulty was that New York law contained no express provision depriving an heir of inheritance for killing the decedent. Palmer's counsel argued that the will complied with statutory formal requirements and remained legally valid. Since Palmer was the beneficiary named in a valid will, he had a legal right to inherit. To deny his claim, the court would be rewriting the will and substituting moral convictions for legal rules.

Judges Gray and Earl disagreed on the proper disposition. Gray adhered to fidelity to legal text and maintained that strict statutory application required allowing Palmer to inherit. Earl, in the majority opinion, emphasized the role of legislative intent in statutory interpretation. The statutory words, he argued, do not necessarily exhaust the meaning of law; the intent behind the statute is the law properly so called. It is inconceivable, on this view, that the legislature would have intended to allow a murderer to inherit a substantial fortune.

Dworkin famously used the case to introduce "theoretical disagreement," which differs from ordinary "empirical disagreement." The latter concerns whether legal texts contain a specific rule; it is a factual dispute about the meaning of words. The former concerns which reasons and principles should serve as standards for determining law's true content [13]. For Dworkin, empirical disagreement alone does not generate hard cases; the dilemma arises from theoretical disagreement. The apparent divergence in methods and conclusions conceals a deeper divergence about the theoretical grounds of adjudication. Substantively, the case pits Gray's principle of respecting wills against Earl's principle that no one may profit from wrongdoing. Dworkin's solution is that, in hard cases, adjudication depends on the judge's constructive interpretation of the principles she endorses.

Professor Sang Benqian, however, argues that even principle-based theoretical construction does not fully reveal the decision-maker's implicit reasoning. Behind the judges' choices lay predictions of social effects and comparative assessments of costs and benefits. Gray's approach — respecting the rule—would preserve legal stability and predictability, assuring ordinary people that their dispositions of property would be honored. To deprive Palmer of inheritance would impose additional punishment beyond imprisonment, seemingly violating the requirement that penalties be prescribed in advance by the legislature and not increased by judicial fiat. Earl's approach focused on the negative social effects of permitting inheritance, which might convey that law allows people to profit from wrongdoing. He offered two related reasons: (1) absent explicit legislative repudiation, legislators generally respect traditional principles of justice; and (2) statutes form an inseparable part of a broader legal system, and interpretation must cohere with that system. Since other areas of law embody the principle that no one should profit from wrongdoing, Palmer should not profit from murder through inheritance.

From the judges' stated reasons, the dispute appears to be theoretical. Yet, on the socio-legal reading, utilitarian thinking is prior to and deeper than theoretical disagreement. Both judges sought to secure maximum social benefit at minimal social cost; Gray valued the social benefits produced by formal rationality, while Earl emphasized the social benefits represented by substantive rationality. Their emphases differed, but they were responding to the same underlying concern with social welfare. The deeper layer of "theoretical disagreement," on this view, is a "utilitarian disagreement." Economic logic is pressed beneath legal logic largely because of ideological inertia and the public's justice-based expectations of adjudication.

From sharp criticism of traditional interpretive methods and their meta-rule, to dissatisfaction with theoretical construction, socio-legal scholarship exhibits an ambitious program for legal interpretation and adjudication more generally. Consequentialist reasoning is presented as a way to dispel confusion in justificatory practice and to provide judges and parties with more determinate guidance. Yet if socio-legal scholarship aims to avoid the abstraction and indeterminacy of earlier justificatory modes, it must propose a more empirical and operational strategy. The cost–benefit formula may appear to offer such a strategy, but what "costs" and "benefits" mean in adjudication requires far more careful definition. Put differently: how is quantitative economic analysis to be conducted in judicial decision-making? Without answering this question, socio-legal efforts may succeed only in breaking down an old world, while failing to build a new

one.

5. The Difficulties of Cost–Benefit Analysis as a Meta-Rule

5.1 The Problem of Quantification

At the meta-theoretical level, socio-legal scholarship maintains that the decisive factor behind judicial theory is utilitarian calculation—more specifically, the measurement of the social effects produced by various interpretive strategies. Because hard cases are said to arise chiefly from conflict between formal and substantive rationality, the adjudicative conclusion is expected to rest on an empirical comparison of the "amount" of social benefit generated by each rationality. If the strategy that promotes formal rationality yields greater social benefits than the strategy that promotes substantive rationality, the former should be adopted; otherwise, the latter.

Socio-legal readings of the Palmer case typically rely on this premise. From a cost–benefit perspective, Earl's solution is said to produce greater social benefits than Gray's. Posner, for example, proposes a simple hypothetical: if the testator had known that a beneficiary might murder him, would he have inserted a clause in the will barring inheritance by Palmer? Almost certainly yes. The decision thus respects the testator's intention while avoiding entanglement in conflicts between principles [14]. This approach is sometimes framed as means–end rationality, and Posner suggests that cases can ultimately be translated into questions of means–end rationality.

Yet the claim that one interpretive strategy produces better cost–benefit outcomes than another is insufficient to support the proposed framework. Without more, it amounts to a probabilistic judgment rather than a determinate justification. For economic analysis to stand firmly within legal reasoning, cost and benefit must be defined with greater clarity and precision. In concrete cases, what are the "costs" and "benefits" of pursuing formal rationality? What are the "costs" and "benefits" of pursuing substantive rationality? If adjudication is fundamentally a utilitarian choice between two paths, one must provide detailed data—at least in principle—showing, for instance, that option A has cost a and benefit b, while option B has cost c and benefit d, and that B should be chosen because $(d - c) > (b - a)$.

In some tort cases, where the relevant considerations are relatively uniform and do not centrally involve normative reasons, economic comparison is indeed more feasible. A classic illustration is drawn from the Coase theorem. Suppose a farmer grows crops adjacent to a railway. Sparks from wheel–rail friction frequently ignite the crops, leading to litigation. Here, cost–benefit analysis can guide a reasonable judgment. Law-and-economics reasoning would compare the cost of relocating the crops with the cost of reducing train speed, then decide in the manner most conducive to wealth maximization. The economic logic succeeds because, whichever side prevails, the relevant criteria can be translated into economic interests.

But when adjudication implicates normative reasons such as formal and substantive rationality, how is comparison possible? First, what do "cost" and "benefit" mean in this domain, and how can they be quantified? Cost–benefit measurement presupposes a unit and standard of measurement. Judges are trained in applying law, not in predicting and measuring the social costs and benefits of interpretive strategies. The costs of pursuing formal rationality may be comparatively straightforward to identify—for example, the time, labor, and financial resources expended in strict statutory compliance. But the "benefits"—enhanced legal authority, stability, and predictability—do not readily translate into measurable data. Substantive rationality presents an even sharper difficulty, since it implicates moral and justice-related abstractions. What are the "costs" of a substantive-rationality approach? How do we determine the extent to which a society's sense of justice has been strengthened or weakened? Eskridge, criticizing institutionally oriented cost–benefit approaches, asks pointedly: how can one conduct an institutional cost–benefit analysis when reliable data on costs and benefits are unavailable [15]? The problem is not merely that proponents have failed to supply data; rather, the normative reasons that drive adjudication resist quantification. Under the seemingly reasonable cost–benefit formula, forcing quantification of these reasons risks producing nothing more than arbitrary choice while diminishing reasons that possess their own integrity. Even if thin and limited parameters could be designed to yield clearer conclusions, what would be lost in the process may be substantial.

Second, quantifying normative reasons introduces a moral predicament. Some values are not merely difficult to quantify; they should not be quantified. Human life is a paradigm example. Even if law assigns monetary compensation for wrongful death, few would genuinely believe that a life can be priced. Reducing life to a number not only debases its inherent value but also violates moral intuition. The trolley problem illustrates the point. In one version, Ms. Jones sees a runaway trolley about to kill five people; she diverts it onto a side track, saving the five but killing Mr. Farley [16]. Without entering the debate between utilitarianism and liberalism, one may accept Sandel's warning that unwavering commitment to utilitarian logic risks licensing conduct that disregards basic human dignity [17]. Certain values—life and health among them—cannot and should not be reduced to commensurable units.

Third, even if standards could be designed, the selection of the measurement context becomes decisive. Cost–benefit analysis is intensely context-dependent and easily distorted by contextual variation. A problem can be rationally resolved only in light of its particularities—time, place, environment, available resources, and the needs and interests of those involved; all evaluatively relevant factors are embedded in concrete circumstances [18]. As context changes, so too do conclusions.

This dependence on context implies that adjudication is inevitably individualized and resists conversion into shared, general guidance. Shen Kui's warning regarding "interest balancing" applies equally to cost–benefit analysis: the richness of balancing can be fully unfolded only in concrete situations and individual cases; any attempt to construct a universally applicable unified model, or to produce an

exhaustive checklist, is futile and risks a form of epistemic authoritarianism [19]. From this perspective, cost–benefit reasoning is a situational art of settling doubts rather than a stable operational model that judges can repeatedly apply. For those familiar with legal method, entrusting the fate of cases to such ad hoc decision techniques raises an obvious question: how can adjudication still secure objectivity, fairness, and predictability—the very aspirations associated with adjudication and the rule of law?

Even in the Palmer case, suppose one could show on a single scale that the benefits of substantive rationality exceed those of formal rationality. That comparison would be confined to a specific time horizon. In the short term, substantive rationality might produce better social effects; in the long run, it might undermine social goods associated with formal rationality. The relationship is not fixed, but the point is that shifting contexts may produce radically different conclusions. If a Palmer-like case arose in the early stages of a country's rule-of-law construction, for instance, formal rationality might be the optimal strategy: law would need to establish authority and cultivate public trust, and the benefits of formal rationality might outweigh those of overriding legal text in the name of substantive justice.

On the surface, translating hard cases into cost–benefit terms appears to resolve the meta-theoretical difficulty of interpretation. Yet the attempt to quantify the very factors that drive adjudication — formal and substantive rationality — confronts obstacles that are difficult to overcome. The failure is not explained solely by insufficient data or unclear contextual boundaries; it also reflects a misunderstanding, whether deliberate or inadvertent, of the complexity of adjudicative reasons and the possibility of comparing them.

5.2 The Structure of Normative Reasons and Incommensurability

It must be acknowledged that the dilemma in hard cases largely arises from comparing and weighing formal and substantive rationality. But, as argued above, seeking to legitimate judicial outcomes by purely quantitative means is close to futile. More importantly, a fully quantified cost–benefit formula does not constitute an ideal adjudicative justification. Normative reasons such as formal and substantive rationality possess not only a "quantitative" dimension, but also a "qualitative" one [20]. It is this dual structure that completes the architecture of practical reasons and, through their joint operation, triggers choice.

Some properties—weight or length—invite comparison purely along a quantitative dimension. But why should such a single-dimensional strategy apply to normative reasons such as the rule of law, morality, and justice? Quantity and quality belong to distinct dimensions; the comparative relation in the former cannot decide, and cannot substitute for, the latter. Sunstein offers a classic illustration: the judgment that a mountain is "really worth" ten million dollars fails to reflect the way many people value a mountain. The evaluative standards differ. Mountains inspire awe and wonder; money is valued for use—though money can, in a different way, inspire awe [21].

The difficulty created by the absence of a common standard by which items can be measured and compared is known in philosophy as incommensurability. In a general sense, incommensurability means that things cannot be precisely measured using a shared numerical unit [22]. It is especially salient among values and normative reasons. Since Isaiah Berlin, the dominance of value monism has been substantially challenged; it has become widely recognized that the world contains multiple values and ends, each with its own ultimate significance. Value conflicts thus resemble a "war of the gods," lacking any comprehensive evaluative framework. Berlin argues that human ends are many, not all commensurable, and often in permanent conflict; to suppose that all values can be measured on a single scale is to misunderstand human freedom and to treat moral decisions as matters solvable, in principle, by a kind of calculating instrument [23]. Formal and substantive rationality are separated by precisely such incommensurability: they cannot be translated into one another, nor reduced to a third common value.

This duality of "quantity" and "quality" not only underwrites incommensurability; it also suggests that normative reasons function in a distinctive way. A normative reason does not become action-guiding merely because it is realized to a higher degree; it is action-guiding because it is a reason worthy of being valued, sufficient to motivate choice in itself. From the agent's perspective, this corresponds to Weber's "value-rational action": conduct determined by belief in the value of a certain mode of action—ethical, aesthetic, religious, or otherwise—without calculating success [24]. In other words, these reasons concern things with intrinsic value: their importance derives from themselves, not from their capacity to promote external ends, nor from the extent to which an external standard deems them "realized." As Chen Jinghui notes, the amount of external value does not displace the central role of intrinsic value in establishing importance; once intrinsic value is successfully shown, the importance becomes secure and is not altered by external value [25].

In adjudication, we do not choose formal rationality (or substantive rationality) only because it is realized to a greater degree or yields better expected effects; rather, it constitutes a sufficient reason in itself. As Summers argues, even without considering future expectations and consequences, such reasons can possess justificatory force in a concrete case; their force does not lie in serving goal outcomes, but in the fact that parties have structured their past dealings and decisions in accordance with norms of correct conduct [26].

Hard cases arise when normative reasons conflict. Does incommensurability leave the decision-maker helpless? Recent work on practical reason suggests that when rational agents confront such dilemmas, they may either drift with prevailing tendencies, or exercise normative powers to create new reasons. Both are familiar in ordinary life. Consider a law student choosing between becoming a lawyer and becoming a civil servant: the former may offer flexibility and higher income; the latter stability and lower risk of unemployment. One response is to observe what most others do and follow that pattern—drift. Another is to impose a new reason, such as the belief that legal practice can help vulnerable groups, or that public service can serve the people. Whatever the new

reason, it manifests the agent's authorship and coherence with an ongoing life narrative. Sunstein notes that standards of choice may emphasize a kind of narrative continuity; selecting one option may be grounded in the coherence it provides over time, while rejecting another—however attractive—because it makes one's story no longer "make sense." [27]

Hard cases are hard precisely because they are unprecedented; drift is not available. What remains is for judges to create new reasons. In other words, when normative reasons conflict and economic comparison cannot proceed, constructive interpretation becomes the only route. Importantly, such constructive interpretation is not an unconstrained invention; it is a gradual interpretation faithful to prior political decisions and legal materials. Under this understanding, one can see why Dworkin introduces principles once conventional legal sources are exhausted in hard cases, and why he insists on the constructive and holistic character of interpretation. By contrast, a cost–benefit meta-rule is a case-by-case decisional technique that cannot respect past decisions and thus poses a real threat to law's intrinsic values.

5.3 The Collapse of Values

If the meta-rule of interpretation is set as an empirical metric of cost–benefit outcomes, law and the values it should represent are pushed out of the center of adjudication. Legal methods—and law itself—are reduced to tools that judges may deploy at will; their function becomes participatory rather than determinative. It is thus unsurprising that socio-legal scholars often describe judicial reasoning as starting not from statutory text but from consequences. Posner candidly describes his method of judging as first asking what outcome would appear reasonable and sensible to an ordinary person, and only then checking whether that outcome is prohibited by clear constitutional or statutory text, precedent, or other traditional constraints on discretion.32 This logic leads socio-legal scholars to deny the existence of any distinctive "legal reasoning": the judicial thought process, they claim, is no different from ordinary rational deliberation. That conclusion reflects the slippery slope implied by an economic meta-rule.

Yet law is not merely an instrument for satisfying basic social demands. As a historically tested and socially respected institution, law also embodies intrinsic values and principles accepted by the community. Rule-of-law values, equality, and justice contain strong justificatory force; these normative commitments ground law, provide its content, and set limits within which judges must move. In adjudication, it is precisely these higher-order reasons that influence which interpretive method is appropriate: a commitment to the rule of law may privilege textual interpretation; a commitment to equality may favor purposive interpretation. Conversely, interpretive methods must, to some extent, respond to and reflect law's internal normative reasons.

Socio-legal interpretive philosophy, however, flattens the plurality of incommensurable values and leaves only cost–benefit consequentialism. Interpretation ceases to revolve around desirable reasons tied to the good and the just, and instead becomes mechanical calculation. Once a strategy promises greater social effects, judges are permitted to employ it without scruple to reach the ends they seek; law itself may become a casualty of that pursuit. In a fundamental sense, economic logic dissolves the values that drive adjudication and thereby dissolves law itself.

The "torture memorandum" is a vivid illustration. In 2002, a legal advisory body within the U.S. Department of Justice issued memoranda recommending "enhanced interrogation techniques," including physical and psychological methods such as prolonged sleep deprivation and waterboarding. While generally regarded as torture, these practices were argued to be legally justifiable in the "war on terror" through expansive interpretation. On a crude consequentialist reading, such measures maximize social effects and thus appear defensible. Tamanaha argues that if law is understood as possessing its own internal integrity and principle-based core of rights, any attempt to justify torture in legal terms is not a plausible contestable claim but would be rejected outright [28].

Ironically, once consequence-oriented cost–benefit balancing becomes the highest principle of interpretation, the rule-of-law ideal—centrally characterized by governance through rules—begins to erode. In the pursuit of maximum benefits, rules treated merely as reference points can be discarded at any moment, and law is demoted to an empirical rule of thumb with no special binding force—precisely the opposite of what the rule of law requires. Hayek emphasizes that obedience to general rules secures freedom because the legislator cannot know the particular cases to which a rule will apply, and because judges, in deciding, have no choice but to follow the existing system of rules and the concrete facts; that is what justifies calling the situation rule of law rather than rule of men. In this sense, rules are the core of judicial legitimacy: their existence can supply sufficient and necessary reasons for judicial conclusions, irrespective of expected consequences. Schauer similarly argues that it is the strictness of rule-application—even when doing so may fail to realize legislative purposes—that makes a rule a rule [29]. Lyons further warns that insisting on maximizing satisfaction only where one can reasonably expect compliance to produce optimistic outcomes, and following past authoritative decisions only under that condition, amounts to denying that law is minimally constrained by statutes and precedents [30].

6. Conclusion

The rise of socio-legal scholarship has posed a serious challenge to legal interpretive theory, and its critiques have compelled interpretive theory to reflect on its own weaknesses. In particular, at the meta-interpretive level, traditional interpretive theory has struggled to offer effective guidance. The difficulty, however, does not lie wholly within interpretive theory. Meta-rules are, by their nature, external to the core task of determining meaning; fundamentally, they involve decision and choice. Recognizing this, socio-legal scholarship proposes that economic logic should guide the selection of interpretive methods. Undeniably, this proposal introduces new perspectives and captures partial truths about how interpretive choice can unfold.

Nevertheless, when adjudication confronts the dilemma

between formal and substantive rationality, cost–benefit analysis cannot serve as a final solution. The two rationalities represent conflicts between normative reasons, and the quantification of normative reasons faces deep obstacles. To date, socio-legal scholarship has not supplied a convincing operational program. At root, the dual structure of normative reasons implies that choice under conflict depends not only on "quantity" but also on "quality." Where normative reasons are incommensurable, judges must engage in theoretical construction through constructive interpretation. The conclusion here is not that socio-legal meta-rules have no guiding significance, but that treating an economic formula as the meta-rule of legal interpretation risks mistaking means for ends and overgeneralizing from a partial insight.

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