

ON SENSE AND SENSIBILITY IN LEGAL INTERPRETATION

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This is not an academic work/paper in the strict sense. It simply aims to state the theme of sense and sensibility in legal interpretation, using a technique of scenarios. It uses theatrical performance as a suggestion. A sort of nod to an artist's sensitivity before an academic problem.

But it is still part of an academic epigraph. A text from Leibniz: "Thus, he who interprets the thought (*tên diánoian*) interprets not only the enunciation (*enuntiatio*) but even more the person who enunciates it (*enuntians*), supplying (*supplens*) what the later said in an imperfect way; however, he supplies not according to his own thought (*sententia*), but according to the thought of the speaker."¹

The idea that the language of the gods is inaccessible to men and thus interpretation is required is an old one. In Greek mythology, *Hermes* was an intermediary between the gods and men, thus the term: *hermeneutics*. Moses was able to talk to God, but he needed Aaron to communicate with the people. Hermeneutics, in these terms, *grants speech to the law*. An analogy with a legal interpretation theory is not all unthinkable.

In fact, it is worth mentioning an opera by Schoenberg, a German composer who died after World War II: *Moses und Aron*, he was the author of the libretto as well.

The plot of the opera refers to a biblical story from the Old Testament, during a significantly decisive moment: Moses received the tablets of the law from God, and after a long retreat, he addressed the people of Israel in order to pass on the knowledge of the divine commandments.

It so happens, however, that according to the biblical account, Moses had problems with his speech (there are hints indicating that he stuttered) or at least was, in more current terms, communicatively challenged.

Hence the resource of making use of Aaron, his brother, who instead, communicated with ease and was understood by the people.

¹ G. W. Leibniz, *The Art of Controversies*, translated and edited by Marcelo Dascal, Dordrecht 2008, p. 80.