The Significance of Purpose in Purposive Construction of Legislation

The Renton Lecture
Statute Law Society Conference
6 June 2025

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1 Introduction

This conference commemorates the fiftieth anniversary of the report of the Renton Committee on *The Preparation of Legislation* in 1975. The Renton report came at a time of growing dissatisfaction with the prevailing approach to statutory interpretation, both within the United Kingdom and in other common law jurisdictions.[1] A few years before, in 1969, the Law Commissions of England & Wales and Scotland conducted a joint review of the interpretation of statutes and criticised the literal manner in which the courts interpreted legislation.[2] Their report argued the courts' literalist approach assumed an "unattainable perfection in draftsmanship"[3] and reflected an outdated conception of the predominance of the common law over statute.[4] To remedy this problem, the report recommended the enactment of a statutory provision requiring courts to interpret legislation so as to promote its general legislative purpose.[5] Similarly, the Commissions' report recognised that legislation was not "made in a vacuum" and recommended that the courts use a wider array of extra-statutory materials in interpretation, including parliamentary debates.[6] Whilst the Renton report principally concerned the drafting and preparation of legislation, it recognised the link with the interpretation of statutes and agreed with the Law Commissions' recommendations.[7]

These reports are a reminder that the now dominant purposive approach to interpretation has not always enjoyed its current status. This is striking given how well established it has become. As noted this year in *Bilta v Tradition Financial Services Ltd*[8], "[t]he court's approach to statutory interpretation is well established in our case law. The court derives the meaning of a legislative provision from the words which Parliament has

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* I am grateful to my Judicial Assistant, Monty Fynn, for his excellent assistance in preparing this lecture.
[1] Jeffrey Barnes, *Modern Statutory Interpretation: Framework, Principles and Practice* (Cambridge University Press 2023) 25–27.
[2] The Law Commission and the Scottish Law Commission, *The Interpretation of Statutes* (Law Com No 21, Scot Law Com No 11 1969).
[3] ibid para 30.
[4] ibid para 10.
[5] ibid para 81(b).
[6] ibid para 46.
[7] The Renton Committee, *The Preparation of Legislation* (Comnd 6053 1975) paras 19.1-19.40.
[8] *Bilta v Tradition Financial Services Ltd* [2025] UKSC 18, [2025] 2 WLR 1015; *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255 [28]-[31] (Lord Hodge); *R (PACCAR Inc and Others) v Competition Appeal Tribunal and Others* [2023] UKSC 28, [2023] 1 WLR 2594 [40]-[41] (Lord Sales).

used in that provision having regard to the context of the statute as a whole and the historical context in which the statute was enacted as the context may reveal the mischief which the provision addresses and shed light on its purpose".[9] The court quoted Lord Bingham's observation in *Quintavalle* that "[e]very statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose".[10]

However, the reasons for this shift and the new significance of the role of purpose in modern statutory interpretation remains under-theorised in this jurisdiction. In this respect, with a few notable exceptions,[11] it seems not much has changed since 1969 when the Law Commissions commented that "there is a remarkable dearth in our legal literature of writing on the general theory of statutory interpretation".[12] This contrasts with the United States where there is a voluminous literature on statutory interpretation debating competing textualist and purposive approaches.[13] It is notable that in the United States theories of statutory interpretation have moved in a different direction. Purposive interpretation was the dominant form of interpretation for much of the 20th century,[14] stemming from the 1889 *Church of the Holy Trinity* case[15] and cemented during the New Deal era in cases such as *United States v American Trucking Associations*.[16] However, from the 1980s to the present day, the US started to shift away from purposive interpretation to a textualist approach, influenced by the work of US Supreme Court Justice Antonin Scalia and academics such as John Manning.[17] This 'new textualism' holds that the meaning of a legal text should be determined solely by its plain and ordinary meaning, without reference to external materials, and eschews the idea of legislative intent.[18] For a period the textualist and

[9] ibid [20].
[10] *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687 [8]. See also: *R (PACCAR Inc and Others) v Competition Appeal Tribunal and Others* (n 8) [40]-[41] (Lord Sales).
[11] Francis Bennion, Diggory Bailey and Luke Norbury, *Bennion, Bailey and Norbury on Statutory Interpretation* (Michael Anderson ed, Eighth edition, LexisNexis 2020); Daniel Greenberg, *Craies on Legislation* (13th edn, Sweet & Maxwell 2024); Neil Duxbury, *Elements of Legislation* (Cambridge University Press 2013); John Bell and others, *Cross on Statutory Interpretation* (3rd edn, Butterworths 1995).
[12] The Law Commission and the Scottish Law Commission (n 2) para 17.
[13] To cite just a few, see: William N Eskridge Jr, 'The New Textualism' (1989) 37 UCLA l. Rev. 621; Henry M Hart Jr and Albert M Sacks, *The Legal Process: Basic Problems in the Making and Application of Law* (William N Eskridge Jr and Philip P Frickey eds, West Academic 1994); John F Manning, 'Textualism and the Equity of the Statute' (2001) 101 Columbia Law Review 1; John F Manning, 'What Divides Textualists from Purposivists?' (2006) 106 Columbia Law Review 70; ibid; Antonin Scalia and Bryan A Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson/West 2012); David K Ismay and M Anthony Brown, 'The Not So New Textualism: A Critique of John Manning's Second Generation Textualism' (2015) 31 JL & Pol. 187; Cass R Sunstein and Adrian Vermeule, 'Interpretation and Institutions' (2003) 101 Michigan Law Review 885; Richard A Posner, 'Reply: The Institutional Dimension of Statutory and Constitutional Intepretation' (2003) 101 Michigan Law Review 952.
[14] John F Manning and Matthew C Stephenson, *Legislation and Regulation, Cases and Materials* (Foundation Press 2017) 45–57.
[15] *Church of the Holy Trinity v United States* 143 U.S. 457 (1892)
[16] *United States v American Trucking Associations* 310 U.S. 534, 542 (1940).
[17] Scalia and Garner (n 13); Manning, 'What Divides Textualists from Purposivists?' (n 13).
[18] Eskridge Jr (n 13).

purposive approaches were in balanced competition, but with the changing composition of the US Supreme Court, textualism has now become the dominant approach.[19]

The central criticism of purposive interpretation made by Scalia and other textualists is that it provides a wide-ranging basis for the judicial re-writing of legislation. Scalia wrote that a purposive approach "frees the judge from interpretive scruples" and that "its most destructive (and most alluring feature)" is its "manipulability".[20] On his view, with the purposive methodology in their hands, judges are able to pursue their own ideological agenda, free from the restraint of the democratically elected legislature.

Although, as I will argue, it is beneficial in many ways, there are dangers associated with the shift to purposive interpretation. Another American jurist, William Eskridge, points out:[21]

> "Although one advantage of grounding statutory interpretation on legislative purpose is that general purpose is more easily determinable than specific intent, a corresponding disadvantage is that purpose is *too* easy to determine, yielding a plethora of purposes, cross-cutting purposes, and purposes set at such a general level that they could support several different interpretations. Purposive statutory interpretation, therefore, might be even less determinate than more traditional approaches."

He identifies a main line of attack against a strongly purposive approach to statutory interpretation: because purpose is fictional (ie something ascribed to the legislature rather than explicitly declared by it) interpretation becomes judicial law-making and judicial lawmaking is questionable for reasons of democratic theory and institutional competence, and on grounds of unjustified elitism.

In my view, focusing my attention on the law in the UK, Scalia's objection to the use of a purposive approach to interpretation requires an answer. Since courts are not themselves legislators and are required to operate within the bounds of their legitimate authority, if their interpretation of legislation is to be informed in a potentially decisive way by reference to its purpose, they need to be able give an account of the process by which they identify the purpose of the legislature; one which is objectively justified as legitimate and within the scope of that authority. This poses problems because the legislature does not usually explicitly identify its purposes which exist apart from the simple words it uses, and identification of the relevant purposes lying in the background may be highly contestable. However, the creation of a statute is a reasoned activity on the part of those involved and understanding the legislature's reasons for acting and for choosing the language it did is to give proper effect to its meaning as expressed in that language.

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[19] William N Eskridge, Brian G Slocum and Kevin Tobia, 'Textualism's Defining Moment' (2023) 123 Columbia Law Review 1611.
[20] Scalia and Garner (n 13) 18.
[21] W. Eskridge, "*The Case of the Speluncian Explorers*: Twentieth-Century Statutory Interpretation in a Nutshell" (1993) 61 George Washington Law Review 1731, 1744-1745.

In this lecture, I will attempt to answer Scalia's objection so far as concerns law in the UK. I will trace the history of the emergence of the purposive approach to show that, far from involving judicial over-reach as its critics worry, a purposive approach emerged in order to give better effect to Parliament's intention in legislating and to accord proper recognition to Parliament's central role in the political and legal system. I also argue that the purposive approach is justified, and indeed inevitable, for reasons to do with the nature of language use, due to the deep connection between purpose and language. Stemming from this connection, I contend that there is a suitable objective methodology available for the courts to identify legislation's purpose and which makes utilisation of the conception of purpose in interpretation legitimate. The utilisation of this methodology enables the courts to identify more accurately the meaning Parliament intended to convey by its use of the language in a statute and avoids the courts usurping the legislative function. Although often simply assumed rather than being articulated, this methodology can be identified as already inherent in the Supreme Court's jurisprudence.

This modern approach to purposive interpretation properly focuses on the particular words used by Parliament as a primary reference point, which is a feature of interpretive practice which it shares with the old-style literalist approach. The words chosen provide the most direct evidence of what Parliament intended, since the primary activity of parliamenarians as a collective body creating a statute is to vote on whether the text containing those words should become law or not. But while focusing on the words, the modern approach also takes proper account of the surrounding context for the choice of those words and what that context reveals about the purpose or purposes for which they are being used. This is justified by the connection between meaning and purpose in the use of language. It is also justified by the practical constraints on Parliament being able to legislate at a level of detail which would make reference to context unnecessary and by the constitutional context in which Parliament operates as legislator to further the common good in a state which respects the rule of law. The laws which Parliament enacts have to be comprehensible to those who are subject to them, who will naturally read them in light of the purposes which they understand Parliament to have been pursuing by their enactment.

Having given this account, at the end of the lecture I turn to consider some of the problems which a purposive approach to interpretation faces, such as the question of how to identify purpose and what materials are properly admissible to do that. I will suggest that the solution to these problems is based on a primary focus on the words used by Parliament, on rigour with respect to the evidence of purpose which is admissible, and on a highly constrained form of legal reasoning in the field of statutory interpretation with pronounced affinities with common law reasoning which are often overlooked.

2 An abridged history of purposive interpretation

I begin with a short account of the origins of purpose in statutory interpretation.[22] There is no statutory interpretation without statutes, and no statutes without a legislature, so inevitably the history of statutory interpretation is intimately bound up with the development of Parliament as an institution. Neil Duxbury explains that originally what passed for legislation in the old English kingdoms did not generally alter the law but rather sought to declare customs which were ambiguous.[23] It was not until the thirteenth century and the first meetings of Parliament, that the word 'statute' came to signify a distinct form of law.[24] But whilst there were statutes by this period, there was not yet anything we would call statutory interpretation on an objective basis. This is because the king's justices were not just responsible for applying the law but also played a key role in drafting them as members of the king's council. When those statutes came before them in cases, it was common for the justices to use their inside knowledge of the drafting to decide the statute's meaning.

As the judiciary slowly became more independent of Parliament from the fourteenth century onwards, it started to develop, in an unsystematic fashion, methods of objective statutory interpretation. But these were again unfamiliar to modern eyes, since statutes were treated as in effect part of the common law. They were like judgments of a high court, as Parliament was conceived, to be woven into the fabric of the common law as a whole. Statutes could be used, like case law, as a foundation for analogical reasoning. The dominance of the common law in the way the courts approached statutes is reflected in the classic statement of the mischief rule from the 16th century in *Heydon's Case*,[25] where Lord Coke held that the "sure and true interpretation of all statutes" could be achieved by discerning, first, what was the common law before making the Act; second, what was the mischief for which the common law did not provide; third, what remedy Parliament resolved to cure the mischief; and fourth, the true reason for the remedy.

The focus on the common law as the first point of inquiry, rather than Parliament's purpose, reflects the nascent constitutional standing of Parliament. A decisive change occurred in Tudor times. Henry VIII and Thomas Cromwell used Parliament and legislation to give legitimacy to the Henrician break from Rome. As Chris Thornhill writes, during the English Reformation 'the principle of rule by the king-in-parliament became a key legitimating device of royal government'.[26] Elizabeth I, although technically an illegitimate child, was acknowledged as Henry's heir because of Henrician legislation. All this in turn meant that Parliament's own authority was enhanced, with the effect that the courts began

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[22] This draws on P Sales, "Modern Statutory Interpretation" (2017) 38 Statute Law Review 125.
[23] Duxbury (n 11) 20.
[24] ibid 21.
[25] *Heydon's Case* (1584) 3 Co. Rep. 7a.
[26] C Thornhill, *A Sociology of Constitutions* (Cambridge University Press Cambridge 2011) 97; also see Duxbury (n 11) 24.

to treat the will of Parliament as expressed in the words it used in statutes as having special force.

In his book *The Constitutionalist Revolution* Alan Cromartie explains, 'One sign that people were impressed by parliamentary power was that they placed increasing stress on parliament's historical intentions'.[27] Samuel Thorne highlighted the change by reference to a text by Thomas Egerton in the Elizabethan period: *A Discourse Upon the Exposicion and Understandinge of Statutes*.[28] Egerton went on, as Lord Ellesmere, to be a leading judge under James I. According to Thorne, this was the first of a new genre to consider statutory interpretation as a distinct topic. It was written at the beginning of the move to focus on the will of Parliament as the legislature, involving stricter adherence to the words of a statute as a binding statement of the law and greater reluctance to engage in judicial legislation to fill in the gaps.

This trend was powerfully reinforced in the course of the 19th century. Three factors were particularly significant. First, growing adherence to a concept of parliamentary sovereignty and supremacy, culminating in the decisive theoretical exposition by Dicey. Secondly, the growing force of democratic ideology, linked to the expansion of the franchise. Thirdly, a loss of confidence on the part of the judiciary in the face of greater parliamentary expertise and access to sources of information regarding social problems.

It is during this period that we see the rise of the literalist approach to statutory interpretation. The classic statement of the rule comes from the *Sussex Peerages Case* in the mid-19th century, where Lord Chief Justice Tindal said: "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such a case, best declare the intention of the lawgiver".[29] Thus stated, this appears unobjectionable and entirely in keeping with modern statutory interpretation, which takes as its starting point the ordinary meaning of the words used by Parliament. Moreover, purposive interpretation was not completely absent during this period and the courts sometimes referred to interpreting a statute with reference to its 'objects'.[30]

However, in practice it was the literal approach that dominated. For example, the Law Commissions' report cites the 1967 case of *Price v Claudgen*,[31] where the House of Lords had to decide whether a workman fixing the broken wires of a neon lighting installation on a

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[27] A Cromartie, *The Constitutionalist Revolution: An Essay on the History of England, 1450–1642* (Cambridge University Press Cambridge 2006) 102–3.

[28] SE Thorne (ed) A Discourse Upon the Exposicion and Understandinge of Statutes (Huntington Library San Marino 1942).

[29] *Sussex Peerages Case* (1844) 8 ER 1034, 1057.

[30] In the 1883 case of *Baumwell Manufactur von Carl Scheibler v Furness* [1893] AC 8 at p 20, Lord Herschell said that "in order to determine the effect of legislation one must look at the object which it had in view". The third edition of *Beal's Cardinal Rules of Interpretation*, published in 1924, recorded that "[t]he manifest intention of a statue must not be defeated by too literal an adhesion to its precise language, but regard must be had to… the objects which it had in view".

[31] *Price v Claudgen Ltd* 1967 SC (HL) 18, [1967] 1 WLR 575.

cinema was engaged on "repair of maintenance of a building" within the meaning of the Building (Safety, Health and Welfare) Regulations 1948. This mattered as, if he was, the employers would have been liable for the inadequate safety guards that caused his fall. In a startling conclusion, the House of Lords unanimously dismissed the workman's appeal, holding that he "was repairing something which was on a building" and not the building itself.[32] It can be seen from such cases why the Law Commissions' report criticised the "sterile verbalism" of statutory interpretation under the literal rule which frustrated the intention of Parliament, rather than give effect to it.[33] As RTE Latham argued in 1937, "[a]bandoning the mediaeval idea that there was a fundamental and immutable law, the common law recognised the legislative supremacy of Parliament. But to the words of the Parliament whose literal authority is thus recognised it accorded none of that aura of respect and generosity of interpretation with which it surrounded its own doctrine. The courts… treated the statute throughout as an interloper upon the rounded majesty of the common law".[34]

However, by 1975 Lord Diplock was able to remark in *Carter v Bradbeer* that "[i]f one looks back to the actual decisions of [the House of Lords] on questions of statutory construction over the last 30 years one cannot fail to be struck by the evidence of a trend away from the purely literal towards the purposive construction of statutory provisions".[35] The difference between the old literalist approach taken in *Price v Claudgen Ltd* and the new purposive approach can be seen from *Uber v Aslam,* where the Supreme Court relied on employment legislation's purpose of protecting workers when holding that Uber drivers were 'workers' under the Employment Rights Act 1996.[36]

What caused this significant change? One possible explanation is the influence of the European approach to interpreting legislation after the passage of the European Communities Act 1972. Lord Denning MR in *Bulmer v Bollinger* described the differences between the English and European approaches: "The draftsmen of our statutes have striven to express themselves with the utmost exactness" and so judges seek to interpret them in a literal manner.[37] In contrast, European legislation "lays down general principles" and expects judges to look to the legislation's "purpose and intent" to "fill in the gaps".[38] The chair of the Law Commission of England & Wales at the time of the 1969 report, Leslie Scarman, was aware of these changes when he gave the Hamlyn Lectures in 1974 under the title

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[32] ibid 579G (Lord Morris).
[33] The Law Commission and the Scottish Law Commission (n 2) para 9; citing Jr and Sacks (n 13) 1265.
[34] The Law Commission and the Scottish Law Commission (n 2) 7fn16; citing RTE Latham, 'The Law and the Commonwealth', *Survey of British Commonwealth Affairs*, vol I (1937) 510–11.
[35] *Carter v Bradbeer* [1975] WLR 1204 1206–1207; cited in Bennion, Bailey and Norbury (n 11) para 12.2. See also *Fothergill v Monarch Airlines Ltd* [1981] AC 251, 280, where Lord Diplock refers to "an increasing willingness to give a purposive construction" to an Act.
[36] *Uber BV and Ors v Aslam and Ors* [2021] UKSC 5, [2021] WLR(D) 108 [71]-[78] (Lord Leggatt).
[37] *Bulmer Limited and Anor v Bollisnger SA and Anor* [1974] 3 W.L.R. 202 425E-F, quoting *Magor and St. Mellons Rural District Council v Newport Corporation* [1952] A.C. 189 191.
[38] ibid 425G-426E.

"English law – The New Dimension". In the lectures, he cites *Bulmer v Bollinger* and states that "[i]f we stay in the Common Market, I would expect to see its principles of legislation and statutory interpretation… replace the traditional attitudes of English judges… to statute law".[39]

However, I do not think this is a satisfactory explanation for the change, other than perhaps as a contributing factor. By the time the European Communities Act was enacted in 1972 the shift to a purposive approach was already underway, as illustrated by the *Kammins Ballrooms*[40] case in 1970. Additionally, during this period, the same shift occurred simultaneously in other common law jurisdictions such as Australia and New Zealand, which were not affected by European law.[41] A better explanation is that the courts have come to adopt an approach which reflects more accurately the connection between language and purpose, implicitly drawing on insights derived from 20th century philosophy of language, including the later work of Ludwig Wittgenstein. The courts have also come to recognize more clearly the constitutional role of Parliament in legislating for a state subject to the rule of law, and the significance that has for the interpretation of statutes. These two impulses run together, since citizens will understand statutes as instances of the ordinary use of language directed at them by Parliament.

3 Purpose and the philosophy of language in statutory interpretation

The philosophical connection between the interpretation of statutes and purpose starts with the unremarkable fact that statutes are expressed in words. Courts interpret and apply statutes according to the proper meaning of those words. But words are not simple building blocks constituted of fixed and unalterable datums of meaning which are put together like Lego bricks to reveal clear and perspicuous meaning in composite sentences. Words have shades of meaning, and which shade is to be applied becomes determinate when used in specific contexts for specific purposes. There are therefore philosophical reasons why the meaning of words involves recourse to the purposes of the person who uses them.[42]

This picture of how meaning is conveyed by language was explained in the later work of Ludwig Wittgenstein.[43] Wittgenstein argued that language is not representational in any simple way, since words do not have a direct correspondence with objects in the world. Instead, sense or meaning is given by the use to which a word is put in a particular context

[39] Sir Leslie Scarman, *The 26th Hamlyn Lectures: English Law - The New Dimension* (Stevens & Sons 1974) 26.
[40] *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850.
[41] Barnes (n 1) ch 2 (Australia); RI Carter and John Burrows, *Burrows and Carter Statute Law in New Zealand* (6th edition, LexisNexis NZ Limited 2021) ch 7 (New Zealand).
[42] I draw here on P Sales 'Contractual Interpretation: Antinomies and Boundaries' in E Peel and R Probert (eds) *Shaping the Law of Obligations: Essays in Honour of Professor Ewan McKendrick KC* (2023), as the issues arising in relation to interpretation of contracts are similar.
[43] In particular, in Ludwig Wittgenstein, *Philosophical Investigations*, tr GEM Anscombe (3rd ed, 1968), and writers drawing on his work. See also HP Grice, *Studies in the Way of Words* (1989).

and as part of a public, rule-governed activity carried on by a linguistic community.[44] Communication is therefore enabled by the objective nature of language, in that the meaning is independent of the subjective intention of the individual speaker. It is only through the speaker's participation in the wider linguistic community that they are able to achieve meaning at all. Words and language are tools which are put to use by the speaker.[45] To common lawyers traditionally sceptical of philosophy, the idea that law is influenced by these high-flown ideas may seem far-fetched. I do not mean to suggest that judges spend their free time pouring over Wittgenstein's *Philosophical Investigations*, but his ideas had a great influence on the jurisprudential tradition associated with Lon Fuller that emphasises the role of purpose in law[46] and that associated with H.L.A. Hart that emphasises the relative indeterminacy of language and hence of the law, which depends on language.[47] Through such influential legal thinkers a form of Wittgensteinian approach to the understanding of language has gained a hold in the law and has implicitly affected the approach to statutory interpretation.

The connection between meaning and purpose explains why courts find it necessary to refer to context in order to explain the meaning of words used in statutes. A word derives its meaning not just from the specific purpose for which a speaker uses it, but from its use in the context of the wider set of linguistic practices informed by the purposes of the community as a whole.[48] Likewise a particular statutory provision is construed not just by reference to the specific object at which the statute is aimed, but also by reference to the wider purposes served by the general law, as an institution directed to the common good. This is because Parliament is best viewed as an artificial person who acts as a lawgiver for the legal system as a whole.

However, disagreement can arise as to what context is relevant and this, in turn, can generate disagreement about meaning, giving rise to uncertainty in the law. The potential extent of this disagreement and uncertainty can be reduced by the specification of an accepted methodology for how to address the resolution of such cases. And as I have said, the identification of such an objective methodology is critical to legitimise the courts' practice of purposive interpretation. As John Manning has explained, modern textualists do recognise the inherent connection between language and purpose that I have outlined, but the alleged lack of a proper methodology is one of the principal reasons why textualists,

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[44] GP Baker and PMS Hacker, *Wittgenstein: Understanding and Meaning* (2nd edn, Wiley 2005)15, and in particular ch VIII ('Meaning and use'), ch XI ('Family resemblance'), ch XVII ('Understanding and Ability').
[45] Ludwig Wittgenstein, *Philosophical Investigations* (PMS Hacker and Joachim Schulte eds, Wiley-Blackwell 2009) §11; Baker and Hacker (n 45) ch 1 ('The Augustinian conception of language').
[46] Lon Fuller, 'Human Purpose and Natural Law' (1958) 3 The American Journal of Jurisprudence 68, 71; Lon Fuller, *The Morality of Law* (Yale University Press 1969) 186.
[47] HLA Hart, *The Concept of Law* (Third edition, Oxford University Press 2012) ch VII, 'Formalism and Rule-Scepticism'.
[48] Manning, 'What Divides Textualists from Purposivists?' (n 13) 78.

such as Scalia, object to purposive interpretation.[49] I turn, therefore, to outline the methodology that the UK courts have developed.

4 Identifying and using purpose – an objective methodology

A helpful starting point for identifying this methodology is Lord Hodge's judgment in *R (O) v Home Secretary*[50], which in recent years is the case on statutory interpretation most frequently cited before the Supreme Court as setting out a succinct statement of the correct approach. Lord Hodge explains that "[t]he courts in conducting statutory interpretation are "seeking the meaning of the words which Parliament used".[51] The starting point is that "[w]ords and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained".[52]

This recognises that in the hierarchy of sources for identifying the meaning of a statutory provision, including its purpose, it is the words of the statute that are of the highest significance. There are important constitutional reasons for this. First, it is specifically by parliamentarians voting to adopt a particular text that Parliament exercises its legislative authority. Secondly, as Lord Nicholls explained in the *Spath Holme* case: "[c]itizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely upon what they read in an Act of Parliament".[53] This recognises the intrinsic purpose of law as a means for guiding human conduct and the need for legislation to aim for accessible clarity so as to achieve this.[54]

Lord Simon of Glaisdale captured both these dimensions in his speech in the *Black-Clawson* case, where he said:

> "Courts of construction interpret statutes with a view to ascertaining the intention of Parliament expressed therein. But, as in interpretation of all written material, what is to be ascertained is the meaning of what Parliament has said and not what Parliament meant to say . … the court is not solely concerned with what the citizens, through their parliamentary representatives, meant to say; it is also concerned with

[49] Scalia and Garner (n 14) 18–19.
[50] *R (O) v Secretary of State for the Home Department* (n 9) [28]-[31].
[51] ibid [29]; citing *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591, 613 (Lord Reid).
[52] *R (O) v Secretary of State for the Home Department* (n 9) [29].
[53] *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] AC 349 397.
[54] For further discussion of this point, see: Lord Sales, 'FA Mann Lecture: Purpose in Law and in Interpretation' (FA Mann Lecture, Herbert Smith Freehills, 19 November 2024), available on the Supreme Court's website.

the reasonable expectation of those citizens who are affected by the statute, and whose understanding of the meaning of what was said is therefore relevant."[55]

The focus on the words of a statute is also important as they may reflect legislative compromises as a way of balancing competing views in a viable *modus vivdendi*, by which parliamentarians seek to optimize the practical realization of competing values.[56] Parliament is a site for compromise by legislators in seeking consensus, or a sufficient consensus to pass legislation. John Manning is right to recognise that this is one of the strengths of a textualist approach to interpretation, as a focus on the text gives effect to these compromises.[57]

However, the purposive approach adopted in the UK recognises that a superficial reading of a provision's text at first glance may be misleading as to the purpose and compromises that the legislature was seeking to achieve, and that it may be legitimate to use other sources to shed light on this. Also, a citizen affected by the statute will still read and understand it as a coherent, rather than random, statement of law uttered by the lawgiver, Parliament. This is because people do not communicate through ordinary language in a random, undirected way, but in order to achieve a purpose they have. Parliament, as an artificial person, will be understood to be using language in the same way. It is natural therefore to think, and Parliament understands, that citizens will look to the context to make a reasonable judgment regarding the purpose of the provision and the meaning to be derived from the text in the light of that purpose. Thus some reasonable and objective assessment of the purpose to be ascribed to Parliament by its use of the statutory words is the best way to give practical effect to any compromise which those words represent.

This is why Lord Hodge goes on to say that "[e]xplanatory notes, prepared under the authority of Parliament, may cast light on the meaning of particular statutory provisions. Other sources, such as Law Commission reports, reports of Royal Commissions and advisory committees, and Government White Papers may disclose the background to a statute and assist the court to identify not only the mischief which it addresses but also the purpose of the legislation, thereby assisting a purposive interpretation of a particular statutory provision. The context disclosed by such materials is relevant to assist the court to ascertain the meaning of the statute, whether or not there is ambiguity and uncertainty, and indeed may reveal ambiguity or uncertainty".[58] The admissibility of these materials reflects the fact that words' apparent meaning, read at first glance, can change or become more specific when understood in their proper context. Indeed, in its recent judgment in the *For Women Scotland* case the Supreme Court noted that "sometimes the purpose for

[55] *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 645.
[56] P Sales, "Legislative Intention, Interpretation, and the Principle of Legality" (2019) 40 Statute Law Review 53, 61.
[57] Manning, 'What Divides Textualists from Purposivists?' (n 14).
[58] *R (O) v Secretary of State for the Home Department* (n 8) [30].

which legislative intervention was required may be the very prominent focus for the legislative activity which follows from it, and thus may frame in a particularly strong way the context in which that activity takes place".[59] However, as Lord Hodge emphasised in *R (O)*, because of the constitutional considerations I have outlined these "external aids to interpretation must play a secondary role" to the words used by Parliament.[60] Therefore the starting point is the words and the court then moves through the hierarchy of different sources of meaning and purpose, in an iterative approach to identify the specific meaning as intended by Parliament.

The methodology of the court in applying these principles can be illustrated through the recent case law. *Cream Holdings v Banerjee* in 2005[61] concerned the interpretation of section 12 of the Human Rights Act 1998, which governs the granting of any relief which might affect the exercise of the right to freedom of expression under article 10 of the European Convention on Human Rights. Section 12(3) provides that "No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed". The question for the House of Lords was the meaning and application of the word 'likely' in this provision. Lord Nicholls observed that "As with most ordinary English words 'likely' has several different shades of meaning", ranging from 'more likely than not' to 'may well', and that its meaning depends on context.[62] This reflects the insight about the nature of language and its indeterminacy, as recognised in the philosophical literature.

Lord Nicholls set out the context of the enactment to identify the purpose of the provision. The approach when deciding whether to grant an interlocutory injunction according to *American Cyanamid*[63] principles did not require the applicant to establish a prima facie case but only to show that that there is a serious question to be tried.[64] Lord Nicholls noted that "during the passage of the Human Rights Bill there was concern that applying the conventional *American Cyanamid* approach, orders imposing prior restraint on newspapers might readily be granted by the courts to preserve the status quo until trial whenever applicants claimed that a threatened publication would infringe their rights under article 8".[65] From this context, he was able to discern that the principal purpose of section 12(3) "was to buttress the protection afforded to freedom of speech at the interlocutory stage" by setting a higher threshold for the grant of interlocutory injunctions than the *American Cyanamid* guideline of a 'serious question to be tried'.[66] This background allowed the court to identify the meaning of "likely" as indicating a "likelihood of success at the trial

[59] *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 [11].
[60] *R (O) v Secretary of State for the Home Department* (n 8) [30].
[61] *Cream Holdings v Banerjee* [2005] AC 253.
[62] ibid [12].
[63] *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.
[64] *Cream Holdings v Banerjee* (n 61) [14].
[65] ibid [15].
[66] ibid.

higher than the commonplace *American Cyanamid* standard of 'real prospect'". This judgment shows the limits of the literalist approach to interpretation based solely on a statute's text. First, it illustrates that there is often no one literal meaning of a word, such as "likely", but a range of meanings which consideration of the statute's text alone does not resolve. Second, it shows how Parliament's intention can be frustrated if proper regard is not had to this context: if Lord Nicholls had tried to interpret the word "likely" without regard to *American Cyanamid* and the background to the Human Rights Bill he would have missed the provision's key purpose.

Another case which illustrates this methodology is the recent judgment in *Darwall v Dartmoor National Park Authority*.[67] This case concerned the extent of the public's right of access to Dartmoor under section 10(1) of the Dartmoor Commons Act 1985. The question the court had to decide is whether section 10(1) confers on the public a right to pitch tents or otherwise make camp overnight on the Commons. The core part of that provision states "Subject to the provisions of this Act and compliance with all rules, regulations or byelaws relating to the commons and for the time being in force, the public shall have a right of access to the commons on foot and on horseback for the purpose of open-air recreation…". The appellant landowners argued that this did not confer a right to camp, as the words "on foot and on horseback" qualified the right such that the open-air recreation in question has to be of a kind which is carried out on foot or on horseback. The respondent Park Authority submitted that the words "on foot and on horseback" state the means by which a person should gain access to the Commons in order to enjoy the right created by that provision and that they do not qualify the forms of open-air recreation which may be enjoyed having entered in this way. This illustrates that the indeterminacy of language may arise not just at the level of a particular word, but also through grammatical structure at the level of the sentence.

The Court worked through the methodology set out in *R (O)* and concluded that the Park Authority's interpretation was correct. The starting point was the wording of section 10(1) itself. There were several indications that camping by individuals who have entered the Commons on foot or on horseback is covered by the right in section 10(1). For example, as a matter of ordinary language, camping is a form of "open-air recreation"; and the structure of section 10(1) contemplated that the primary restriction of the right of access is by forms of regulation, which at the time the 1985 Act was passed did not prohibit camping. The Court then considered the other provisions in the 1985 Act and previous statutory provisions, which also supported the court's conclusion. For example, section 193(1) of the Law of Property Act 1925, an earlier statute regulating public access to common land, provides that members of the public "shall … have rights of access for air and exercise to any land which is a metropolitan common…", but camping is specifically excluded by subsection (1)(c). The increasing relevance of pre-existing statutory regimes as context is

[67] *Darwall v Dartmoor National Park Authority* [2025] UKSC 20.

one of the principal ways in which modern purposive interpretation is different from the old mischief approach outlined in *Heydon's case*. As the Law Commissions' report of 1969 noted, the focus of the mischief approach solely on the common law reflects an outdated view of the relationship between Parliament and the courts which saw the common law as always forming the relevant background context for legislation. However, with the modern predominance of statute, more often than not Parliament will have previously legislated on a topic and, in those circumstances, it is these statutory regimes which form the principal context.

These cases illustrate the overall methodology which the UK courts adopt for purposive interpretation. I now turn to explore this methodology in further detail by looking at specific problems that can arise under a purposive approach. I contend that a constant theme is that when providing a solution to these problems, modern statutory interpretation displays affinities with the common law method, whereby competing interests are weighed up and balanced to determine the precise content of the rule to be applied.[68] However, the methodology for purposive statutory interpretation is not *identical* to reasoning at common law, as the court is constrained by the statutory text and must attempt to give effect to the balance of the competing interests that has been struck by Parliament.

5 Some problems with purposive interpretation

5.1 *What evidence as to purpose is properly admissible?*

The first issue to consider is, what materials are properly admissible as evidence of the statutory purpose? This is a question which frequently arises in litigation and commentary. I have already discussed the relationship between explanatory notes and the meaning of the text, but I wish to spend a little more time explaining why explanatory notes are admissible in the first place.

As I noted in my judgment in the *PACCAR* case,[69] under current practice explanatory notes are published alongside a Bill during its passage through Parliament. These are publicly available documents produced specifically to assist Parliament in its consideration of a Bill and Parliament can therefore be presumed to have knowledge of and to have relied on them. This is in contrast to guidance notes produced by the Government after an Act has become law, as they were not available to Parliament when considering the Bill and cannot directly inform the court as to what meaning Parliament intended the legislation to have. In this respect, the rule is similar to that in contract law, in that only material that was available to the parties at the time they entered the contract is admissible as evidence of its objective meaning.[70] However, the explanatory notes produced immediately after the Act is promulgated are also admissible evidence of meaning, as indicated in *R (O)* and in *PACCAR*;

[68] See further: Sales, 'Modern Statutory Interpretation' (n 22).
[69] *PACCAR* (n 8) [42].
[70] *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] AC 1101 [14] (Lord Hoffmann).

this is on the basis that they they reproduce the explanatory notes available to Parliament itself during the passage of the Bill, and to that extent they are a convenient reference source for material which is relevant on that basis.[71] To the extent that they are different from the explanatory notes available to Parliament itself, they are admissible on the separate basis that they constitute a relevant form of contemporanea expositio (exposition of contemporary understanding) regarding the meaning of the Act, albeit they are generally produced by quite junior civil servants who were not themselves involved in its drafting.

Another important feature of explanatory notes is that they are public documents available to citizens after the Bill becomes an Act. In the *PCSU*[72] case I distinguished explanatory notes from notes on clauses, which are internal government documents made by civil servants to assist Ministers preparing for debates in Parliament. I emphasized that these are not admissible as "it is fundamental that all materials which are relevant to the proper interpretation of an [Act] should be available to any person who wishes to inform themselves about the meaning of that law".[73] This was also recognised by the Law Commissions in their 1969 report, when they concluded that, being confidential, notes on clauses "cannot be said to form part of the contextual background against which Bills are discussed in Parliament".[74] However, although explanatory notes are admissible, it is a cardinal principle that they cannot displace clear words used by Parliament. As Brooke LJ held in *Flora v Wakom,* where the two conflict, the statutory words must take precedence.[75] The point about the primacy of clear statutory language was emphasized by the Supreme Court in its recent judgment in *For Women Scotland*.[76]

Another external aid often relied upon are the reports of Royal Commissions, the Law Commission and other bodies that make recommendations to reform the law on the same topic as an Act which is passed after them. However, these must be subject to more cautious treatment than explanatory notes as legislation does not always implement such reports in their entirety. There must be evidence that Parliament was implementing their recommendations. In the *Dartmoor* case, the Court rejected reliance on two reports made prior to the Act as they did not address the question before the court and the Act was not implementing either of the reports.[77]

Less frequently, reliance is placed on delegated legislation to interpret the parent Act. In *PACCAR*, the Court explained that in limited circumstances this is permissible where the delegated legislation is promulgated at a time roughly contemporaneous with the Act itself, is approved by the same Parliament, is drafted by or on the instructions of the same

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[71] *PACCAR* (n 8) [42]
[72] R *(Public and Commercial Services Union) v Minister for the Civil Service* [2010] EWHC 1027 (admin), [2011] 3 All ER 54.
[73] ibid [55].
[74] The Law Commission and the Scottish Law Commission (n 2) para 67.
[75] *Flora v Wakom (Heathrow) Ltd* [2006] EWCA Civ 1103, [2006] 4 All ER 982; cited in Bennion, Bailey and Norbury (n 11) 24.14. See also *Fothergill v Monarch Airlines Ltd* [1981] AC 251, 279-280 (Lord Diplock).
[76] *For Women Scotland* (n 59) [2025] UKSC 16 [11].
[77] *Darwall v Dartmoor National Park Authority* (n 67) [48]-[51].

government department, and can fairly be regarded as being part of a single legislative scheme with the Act. Where these factors are present, it is reasonable to suppose that the two pieces of legislation are inspired by the same underlying objective and are intended to reflect a coherent position as understood at the time the primary legislation is presented to Parliament. In that situation, the subordinate legislation can be regarded as a form of parliamentary or administrative contemporanea expositio (exposition of contemporary understanding) in relation to the primary legislation which may provide some evidence of how Parliament understood the words it used in the primary legislation, even though this does not decide or control their meaning. However, again, care must be taken with this source of external aid. In *Dartmoor*, the Court rejected reliance on delegated legislation as it was made four years after the parent Act had passed and was not drafted by or on the instructions of the same government department.

Perhaps the most contentious of external aids to interpretation are statements from Hansard made in debates during a Bill's passage through Parliament. Historically, these statements were subject to a strong exclusionary rule. It was only in *Pepper v Hart*[78] in 1993 that the House of Lords accepted that statements in Parliament could be treated as admissible evidence of Parliament's intention. Three conditions were laid down: (a) the legislation is ambiguous or obscure or leads to an absurdity; (b) the material relied upon consists of statements by a minister or promoter of the Bill; (c) the statements relied upon clearly show the meaning. These criteria are policed strictly. This can again be illustrated by the *Dartmoor* case, where the Court held that statements from Hansard relied on by the appellants were not admissible as the legislation was not ambiguous or obscure.[79] The appellants also argued that the material was admissible on a separate basis from *Pepper v Hart,* namely that it is legitimate to refer to statements from Hansard to identify the context of the legislation and its mischief. The Court rejected this alternative basis as, given the purposive approach to construction now adopted by the courts, the fine distinctions between looking for the mischief and looking for Parliament's specific intention cannot be maintained.[80]

5.2 To what extent can the Court inject normative content into the concept of purpose?

The second problem I wish to examine is the extent to which the Court can inject normative content into the concept of purpose. The nature of language helps to shed light on the extent to which courts can inject normative content into a statute. Just as the meaning of a word is dependent on the wider set of linguistic practices of the community as a whole, so too is the meaning of a statute dependent on certain well-recognised understandings inherent in the rules of the common law system into which Parliament introduces its legislation. Also, to understand legislation, one has to posit Parliament as the

[78] [1993] AC 593.
[79] *Darwall v Dartmoor National Park Authority* (n 67) [40].
[80] ibid [42].

speaking agent and that requires an understanding of its nature as a person. This in turn requires an appreciation of its constitutional position, its role within the legal system and the general purposes of the legal system which it exists to serve and implement. Statutes are legal instructions transmitted into an existing, highly developed framework of legal values and expectations. The existing law, modes of reasoning, and established localized value systems provide the interpretive context in which a statute is read. Parliament exists and is given its powers for the purpose of promoting a legal, political and social system characterised as a liberal democracy subject to the rule of law. That is the basic disposition to be ascribed to Parliament as a fictional person, in the light of which its use of language is to be understood.

Against this background, we can understand the legitimacy of what lawyers in the UK call "the principle of legality". This is an approach to legislative interpretation which proceeds from a background assumption that Parliament intends by its legislation to respect certain existing rights and principles and to further certain general social objectives as part of the legislative package: "a principled presumptive commitment by the legislators to certain basic principles which can be viewed as underpinning a liberal democracy committed to the rule of law."[81] The principle of legality is concerned to ensure that legislation that overrides fundamental common law principles or rights can clearly be appreciated as such at the time of its passage, so that Parliament's intention to achieve that result is properly established.[82] A paradigm example is the presumption against retrospective effect of laws, in particular in relation to imposition of criminal liability. The role for the principle of legality is not to inject normative content into legislative texts purely on the authority of the judges, but to exercise a checking or editorial function to see that the legislature and the executive, which has the prime role in promoting legislation, have sufficiently held in mind the longer term principles, rights and freedoms which support the moral claims of democratic rule, when legislating to adopt a particular statutory text.[83]

The principle of legality thus functions as a third order form of purposive reasoning, sitting behind the text of the statute itself and the specific types of evidence of statutory purpose, but capable of providing guidance in relation to the meaning of both of those. Again, there is no simple test which determines which form of evidence should predominate as guidance as to meaning. Judgment is called for to assess the relative weight of text, explanatory materials and background constitutional principles. For example, in the *Spath Holme* case[84] the exercise of an open-ended statutory power enabling a Minister to make

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[81] Sales, 'Legislative Intention, Interpretation, and the Principle of Legality' (n 56) 62; and see P Sales, 'A Comparison of the Principle of Legality and Section 3 of the Human Rights Act 1998' (2009) 125 LQR 598. See, eg, *R v Secretary of State for the Home Department, ex p. Pierson* [1998] AC 539, 573G-575D (Lord Browne-Wilkinson), 587C-590A (Lord Steyn). See also *Maxwell on the Interpretation of Statutes*, 12th ed. by P. St. J. Langan, pp. 251ff ('Statutes Encroaching on Rights or Imposing Burdens').

[82] See *R v. Secretary of State for the Home Department, ex p Simms* [2000] 2 AC 115 at 131E-G (Lord Hoffmann).

[83] Sales, 'Legislative Intention, Interpretation, and the Principle of Legality' (n 56) 62.

[84] *R v Secretary of State for the Environment, Transport and the Regions, ex p Spath Holme Ltd* [2001] 2 AC 349.

an order restricting rents chargeable for residential property was challenged by property owners, who argued that it could only be exercised for the purpose of countering inflation and not (as it had been) for the purpose of achieving greater fairness between landlords and tenants. The argument succeeded in the Court of Appeal but failed in the House of Lords. In support of their argument the property owners sought to rely on a presumption that Parliament does not legislate to take away property rights without compensation. However, in the House of Lords this was treated as a factor which was outweighed by other circumstantial evidence regarding the context in which the relevant legislation had been enacted.

This illustrates how modern statutory interpretation has become closer to the common law method, albeit constrained in important ways by the statutory text. This is the familiar process of extrapolation of underlying principles, values and reasons for action from disparate sources, with a view to weighing each of these against others in order to identify the particular rule to apply to the case in hand.[85]

5.3 How should the courts react where there are multiple (and potentially conflicting) purposes?

In *Spath Holme* it was common ground that the ambit of the statutory power was limited to the purposes for which it was granted.[86] So how should those purposes be identified? Were they limited to combating inflation, or could the provision be used to protect tenants against high rent rises?

The wide language used in the provision was not ambiguous or obscure, and did not lead to absurdity,[87] but still the House of Lords was left with a concern that to give the text its wide grammatical meaning would be excessive. So it went back to predecessor legislation to see if that legislation as properly construed indicated any narrowing of meaning. Taking account of a range of indications it was concluded that it did not – the predecessor legislation was not specifically directed to inflation, by contrast with other legislation enacted shortly before it; the statutory power was not limited in time or subject to any sunset provision; and one would have expected Parliament to make more specific reference to a counter-inflationary purpose if such a limitation was intended.[88]

The House of Lords relied on the speech of Lord Simon and Lord Diplock in *Maunsell v Olins*[89] in which they warned against a simplistic approach to construction based on an assumption that the drafter has sought to remedy one mischief only (or, in other words, that a statutory provision has only one statutory purpose):

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[85] Sales, 'Modern Statutory Interpretation' (n 22) 125.
[86] *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 1030.
[87] See eg [2001] AC at 398 (Lord Bingham).
[88] ibid 390 (Lord Bingham).
[89] [1975] AC 373 393.

> "For a court of construction to constrain statutory language which has a primary natural meaning appropriate in its context so as to give it an artificial meaning which is appropriate only to remedy the mischief which is conceived to have occasioned the statutory provision is to proceed unsupported by principle, inconsonant with authority and oblivious of the actual practice of parliamentary draftsmen. Once a mischief has been drawn to the attention of the draftsman he will consider whether any concomitant mischiefs should be dealt with as a necessary corollary."

A court may therefore have to balance competing purposes which can be identified as underlying the legislation in order to arrive at a persuasive interpretation of the text. In another recent case, *N3 and ZA v Home Secretary*,[90] concerning deprivation of British nationality in relation to persons suspected of involvement in terrorism, but against the background of the Convention Against Statelessness of 1961, the Supreme Court had to balance an identified object of the legislation to allow the Home Secretary to proceed speedily by making a deprivation order against an underlying or background purpose that persons should not be rendered stateless, contrary to the UK's obligations under international law. We pointed out that a statutory regime may reflect, and balance, a number of intersecting purposes, both as to substantive outcomes and as to the procedural protections inherent in the regime. In that situation, a more nuanced analysis may be called for than to treat the statute as having a simple clear-cut effect which is unchanging and uniform in all circumstances and for all purposes; this approach to statutory interpretation required weight to be given to individual rights affected by the operation of the statutory regime.[91] The statutory objective to allow speedy action in appropriate circumstances was identified as dominant, but only so far as it was necessary to allow this prior to a more thorough investigation of the situation, at which point the background purpose of protecting an individual against statelessness took priority. The result was a complex balancing of interests effected through the medium of statutory interpretation.[92]

This style of legal reasoning is a form of practical reasoning in which reasons for legislative action are evaluated. In practical reasoning ends and means interact. It is inherent in deciding whether to pursue some goal that one has to take account of available means and the costs associated with them. So it is by no means unusual that courts have to consider cases in which specification of purposes by a court involves identifying conflicts between those purposes, so that purpose-based reasoning poses its own problems of interpretation at the same time as it might potentially provide resources to assist in resolving problems of interpretation of a specific statutory text. Again, the affinity with common law reasoning seems clear.

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[90] *N3 and ZA v Secretary of State for the Home Department* [2025] UKSC 6.
[91] ibid [88].
[92] ibid [88]-[93].

6 Conclusion

As we mark the 50th anniversary of the Renton report, it is clear that the purposive approach to interpretation it endorsed has now become an established part of our law. Through exploring the historical and philosophical foundations of statutory interpretation, I hope to have shown that the purposive approach is not an unnecessary judicial innovation but rather a response to consideration of the constitutional role of Parliament and of the relationship between Parliament and the courts, and to the nature of language itself. While there are legitimate concerns and problems that purposive interpretation must face up to, these concerns have been mitigated by the careful, iterative methodology that has been developed by the courts. Under this methodology purposive interpretation does not grant judges unchecked discretionary power to shape legislation as they see fit, but is instead a disciplined approach rooted in respect for statutory language and constitutional values and familiar forms of practical reasoning drawing on an affinity with the common law. Looking ahead, the challenge will be to continue refining this approach to ensure it remains principled, objective, and faithful to Parliament's intention in enacting legislation.