Towards a Theory of Adjudication: Public Reason as Public Meaning

By Josh Keton

 Since H.L.A. Hart’s *The Concept of Law* spurred a tectonic shift in analytic jurisprudence linguistic considerations have moved to center stage in many philosophical theories of judicial interpretation. More recently, Justice Antonin Scalia’s prominent espousal of a form of New Originalism has catapulted linguistic issues to the center of the actual practice of the law in the United States, giving wider credence to the “linguistic turn” in legal theory and a resurgence of originalist theories of judicial interpretation. Perhaps the most linguistically sophisticated such theory is Lawerence Solum’s “Semantic Originalism.” Moreover, Solum has recently published a series of articles that endorse the relevance of the notion of public reason to the practice of legal adjudication. However, it is my contention that, though more linguistically sophisticated than most forms of the New Originalism, Solum’s commitment to both a notion of public reason and to original public meaning originalism are in tension. Specifically, proper appreciation of the importance of pragmatic considerations to linguistic interpretation generally prevent Solum from being able to muster the value neutral notion of linguistic content necessary for Semantic Originalism to succeed. Instead, I argue that a theory of judicial interpretation should squarely face the lack of a neutral notion of linguistic content by demanding that judges provide public reasons for both the linguistic *and* legal content they attribute to legal texts in their decisions.