



## Semiotic Aspects of the Transformation of Legal Systems

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In its attempts to account for new *realia* today, European legal theory inevitably confronts paradoxes and even *aporiae* insofar as it is founded upon the traditional conceptual structures of the post-medieval era and modernism. It can choose either of two directions, viz., to create fresh global structures similar to the general will, normative causality or the principles of law, or to limit itself to partial explanations, using the achievements of new *realia* themselves. If the latter, the choice can also be more or less an ambitious one: either to proceed from the development of law, or to avail itself of what has already been achieved by humanitarian thought. The first way is more difficult, containing the risk of a return back to ontologizing which since Nietzsche is viewed negatively. The second one is more modest but at the same time is more proof against error. At least because it contains the verifications already established by present day humanitarianism. In that case, there are three possible risks, viz., a) to outgrow implicit philosophizing on law which leads to practical application directly and to enter the realms of detached speculation; b) to fail in avoiding eclecticism; and c) to show one-sidedness as an explanatory theory. I personally do not consider the last-mentioned a demerit: methodologically, it makes for consistency in the-orientation and in terms of compatibility it fits the legal phenomena into the general social context of interaction.

Thus, my choice is in favour of the second indicated possibility and it stems from the current linguistic turn in humanitarian studies and from the new cognitive state of affairs of semiotization of social phenomena. I see support for this choice both in what I regard as fundamental characteristic features of law, e.g. in the creation of the legal semantics of the Roman lawyers or in H. L. A. Hart's insightful observation that the normative system gives rise to normative statements in the same way as does the system of natural language, and in the new challenges before legal theory especially in Europe: pluralism of cultures, of ways of dispensing justice, of phenomena which on the one hand claim links to law and on the other, seek to attain a certain degree of correlation and commensurateness between them and between the semantic load of each.

1. This paper attempts to find a semiotic explication of the transformation of legal systems. In law, transformation, viewed as semiosis, can be traced in synchronic as well as in diachronic terms. A prerequisite for this is the preliminary explication of the semiosis of legal reasoning (as practical thinking within law and in terms of a legal system) and the semantic consequences of its operation. This means that the transformation of legal systems is regarded as a special case in a wider context of transformations in law generally.

This is illustrated by four patterns of transformation in law:

On one hand diachronically:

\* the first pattern is the operation of *Lex commisorio* according to the interpretation made by the pandectists of Roman law wherefrom we draw conclusions about the development of law in past ages: Law can be individualized as a particular kind of reality through its semantics. But the legal significance of a given circumstance consists in the legal regime under which it is subsumed. Therefore it requires an operation of a transformation which is similar to contemporary categorical reference. The described operation of *Lex commisorio* is given as an example for the creation of a legal dogmatic model through transformation.

\* the second pattern is about the role of discussion, and its rules and procedures for transfer of legal significations, including the birth of new concepts, so that through re-signifying as a kind of transformation legal knowledge increases.

On the other hand this is illustrated synchronically:

\* thus the third pattern regards the prescribed norm as an invariable unit in the diverse structuring and transformation of reality. The formal correlation between legal norm and factual circumstances stipulated in its hypothesis is a structure of a transformation: it puts into operation the action of law.

\* the fourth pattern is about the interaction and semantic inter-penetration of different legal systems which seem self-referential and closed and the consequences of that interaction which sometimes strongly reduce the transformation itself.

I suggest what follows to the readership as an initial theoretical position for further discussion on the transformation of legal systems. I also think that semiotic analyses of the interdependence among legal discourses today contribute to the rethinking of the traditional legal theory.

2. Thus, let us examine the basis for the explication of the semiosis of legal reasoning. First and foremost, is the concept of the Interpretant. Interpreting the logic of thinking in one of his earliest essays entitled “Some Consequences of Four Incapacities” (1868), Peirce introduces the conception of Thought-Sign. He explains its semiosis in the following manner:

- 1) the Thought-Sign refers to the thought interpreting it;
- 2) it is a sign of a thought it contains (so-called by him subsequent thought), interpreting it, and
- 3) it is a sign in the relation, which is thought as an immediate object of the mind.

These are the three references of the Thought-Sign:

The contained (subsequent) thought is equivalent to the object it refers to. Since this object is represented as a sign, the contained thought would appear as the Interpretant in the sign for that object.

For its part, the interpreting thought is an object of a meta-thought for it in the Thought-Sign and that meta-thought is an Interpretant of the Thought-Sign which links the latter with other thoughts in the stream of consciousness: in the stream of consciousness the Interpretant of the object will be interpreted by the next thought-interpretant, and so on.

The interpreter of a sign is a real object; it is not an individual person but the thought, interpreting the sign, itself. The sign is a thing, representing another thing to someone in some relation or quality. In the mind of that someone the sign creates an equivalent sign which is called the Interpretant of the first sign. The Interpretant is the thought, interpreting that sign. When we think, no matter what thought this Thought-Sign refers, this is always interpreted by our next thought. Thus, a thought gives rise to another thought: thought follows thought to reach meaning. It is the Interpretants that perform the functioning of thinking which has a sign character. Proceeding from the above-indicated conceptions, the structure and phenomenology of legal reasoning can be clarified (See point 8).

3. In the positivist paradigm the legal phenomenon becomes a pivotal concept in the legal theory: the meta- juridical questions concerning meaning are reduced and the phenomena are described of the operation of law, of “that which appears,” of the diverse aspects and manners of appearance. Therefore, each positivist theory claims to be a methodology: interpreting law and explicating its phenomenon. The phenomenology of law poses before law thinking the requirement for adequacy between the series of legal manifestations and the series of interpretations.

The system understanding of law, both as a heritage from the era of rationalism where law is built upon a formal principle, regardless of whether it is based upon justice or is a system of positive law; and as a heritage from the development of sociology, in accordance with the theories of social action whereby law was embedded as a subsystem within the system of society, pose the problem of identification of law in every element or manifestation of its structure, the questions of differentiating between them as well as of the very organization of structuring and restructuring. Thus naturally arises the need for a phenomenology or a method of knowledge of the rule (the measure) of linking in a number of series the structural units of the system of law and hence – the subsystems of its apparatus of categories or its manifestations. This leads us to the necessity of explicating the transformations in law.

Two conceptions, allowing theorization correlative to semantics, will lead us to explanation we look for: one is *the structural theory of transformation* and the textual varieties within the legal universe; the other is the conception of *the interpretation as an invariant structure* within the system of legal reasoning and its self- sufficiency for explicating the semiosis.

4. As is well-known, a system is a cognitive pattern of a certain order, thereby explaining the principle of its organization and articulating into a structure its building blocks in such a way that their functional connection should permanently and limitlessly produce action effective for the theoretical development and practical significance of the system.

Each unit in a given system of law is a structure or a structural element, insofar as it possesses legal properties. If it is to solve the problem of the identification of law in every manifestation of its structure within the context of its organization of structuring, the cognitive pattern has to be effective in explaining the mechanism of each legal form as a structuring of formal correlations of legal semantics between neighboring elements or their combinations in some order. This must be possible regardless of whether this order is outlined as a structure (in the sense of an edifice, a construction), as a syntactic, i.e. consecutive link, or as a type of hierarchy – a classification (the so-called “genealogy trees,” *stemma*), or a system (simple or complex).

The systems theory offers the following pattern for the apparatus of categories of law: the legal concepts are the elements of its structure and the system works through their functional linkage by the categories. This is possible through the principle of classification. If we use the conception of semantic fields, we will bind up the classification inherent in law with the legal regime. This is confirmed by the heritage of the Roman jurists. In my view, they differentiate the specifically legal semantics and create one of the fundamental dogmatic patterns of law. This would be an example in a diachronic perspective – of a type of transformation in the development of law which has created the dogma of legal semantics, which is still in operation today.

5. Here I understand legal dogmatics as a set of patterns (models) in line with which law is formed and operates. In my view, juridical experience – the development of law – is the sum total of legal formulae and rules. In it also lies the continuity of law throughout all transformations it undergoes. In this sense the development of legal dogmatics is coincidental with the development of law itself. The ways in which people work with these formulae and rules take shape and develop in parallel. Legal reasoning is characterized by regularities pertinent to it and develops via specific models of legal reflection. As a set models and ways of operating with legal stipulations it develops into what we can call a juridical paradigm. Differing modes of legal reflection are prevalent in differing epochs, moulding differing patterns of thinking. Those patterns that are productive for the law’s specific operation are superimposed and stabilized as lasting dogmas. Here, with the ex-

ample of fashioning (*Gestaltung*) of legal dogmatics we attempt to trace the arising and establishment of dogmatic patterns and to investigate how the development of a rational activity like a lawyer's reasoning, paralleled by the law's development results in a practically legal solution of concrete social problems fitting them into and qualifying them within legal reality.

Law can be individualized as a particular kind of reality through its semantics. Legal semantics provides qualitative autonomy of law. I hypothesize law not to consist solely of the significance "legal." Along with the kinds of significance (*signifié*, according to Ferdinand de Saussure) it consists of the links between the fact (the social problem or dispute) and the legal norm, as well as of the regimes under which the facts of the case are subsumed. The legal significance of a given circumstance consists in the legal regime under which it is subsumed. I define this as its legal semantics. This significance is imputed by the legal consequences of the operation of the law itself. Under the operation of the law social reality acquires legal semantics. Law sets it in order by transforming its non-legal significance into a legal one. Without this transformation the law could not regulate the social realia, semantically incompatible with its normative nature. It accomplishes this transformation precisely as a practical act: with a view to solving a social problem. And involves subjecting reality to a particular legal regime by applying legal consequences to that reality.

6. We know that in Roman law (particularly according to the commentaries of the pandectists in Germany) the materialization of the resolutive condition (*condicio ad quam*) can have real effect (in the case of the canceling of a contract when it is destroyed retroactively by a cause other than the initial nullity). Let me consider this condition in *Lex commissoria* – the additional contract by which a sale can be canceled in case of an untimely payment of price. This is the opinion of Julian (*The Digest*, book 41, title 3, fragment 2, paragraph 3 and paragraph 4). Ulpian is still more categorical: "If the estate is sold under *Lex commissoria*, the sale must rather be deemed terminated when the condition materializes than be considered that the contract has been signed under such a condition" (*The Digest*, book 18, title 3, 1). If we proceed from the semantic field of "the condition" we can make an infinite series of classifications – of the types of condition – but that would not provide an answer to the legal significance of a given condition. In itself, the significance of a condition is that it is the cause of some consequence. If we proceed from the semantic fields of the features of the "conditions" – "suspensive" and "resolutive" – we cannot understand juridically why in

one case a given act does not materialize but is postponed and in another, that a given act is terminated, unless we employ the construction of the contract, i.e. with the legal significance of a construction which transforms another one and is therefore a new jural fact, entailing subjective rights and obligations – legal consequences. Only then the legal semantics of the concept “resolutive condition” can be reached.

In this case, however, it is more important to consider the following: the legal consequences of that “resolutive condition” which is of legal value are equalized with the legal consequences of the “avoidance of contract.” Actually, it is precisely the legal regime that requires the introduction of the new construction of the additional contract. Ulpian puts it absolutely clearly: it should rather be considered that the purchase is canceled, than that the contract has been signed under a condition. The contract has been concluded and the direct legal consequences come about. Nonfulfilment of the payment obligation is a jural fact that leads to the legal regime of retroaction (extunc): the contract is terminated (when the condition comes about), the termination has retroactive effect. That means that the legal regime is to be found in another semantic field, which is a type of the feature “culpable nonfulfilment,” which, in the semantic field of the conditions (the jural facts) is its kind of illegal act. It is known that both cancellation of contracts and restitution has legal semantics (regime) of retroaction and the judge would rule accordingly when the respondent is found guilty. We know both the classification of the conditions as additional stipulations and the semantic field of the conditions as jural facts in which we now find an illegal (guilty) act: nonfulfilment of the obligation to pay the price. It is precisely this latter classification, immediately linked to the legal significance of the contract, i.e. with the rights and obligations entailed by it and therefore with its effect, that would define the legal significance (the legal regime) of the “resolutive condition”.

The so-called “new construction” which is introduced is actually an operation of a transformation which is expressed in the inclusion into the semantic sum total of a jural fact which – when it materializes – will lead to the corresponding consequences of the retroaction, i.e. a regime will come about which will be “reverse” to that applying in the case of an unconditional contract.

This pattern of transformation which today we define as categoric reference and which is expressed in the “separation” of the generic concept from the semantic field and the “connection” of the genus of its distinctive feature with the semantic field already links legal reasoning not only with its

practical activity but also with its nature to give a meaning to reality and to the legal concepts themselves in a specifically juridical manner. Thus, we can put forward the hypothesis that the category plays the role of a genus, which links a concept to concept and concept to situation.

Through the categories, we have a set of paradigms and we need yet another “grammar” of rules for reaching a ‘synharmonization’ with these significances, as well as of rules through which the information of the significances in the categorical system will turn into information in other systems in order to be able to apply – already through the categories achieved as significance – the necessary legal regime. These are the rules of the juridical code of categoric reference (correlation). Thus, the mechanism of transformation starts working within law while at the same time preserving its legal semantics it allows it juridically to qualify reality.

7. So, which are the invariable units of legal semantics through which law operates and through which it transforms, arranges and re-arranges reality and its own apparatus? In order to find out what is the “order” of the system, which it will explicate as a cognitive pattern, we should indicate that order as a *series of “representatives” of legal quality*. These “representatives” must besides be a fit structure for transformation so that law can “every time and everywhere” operate through them as invariable units. To be a structure, these “representatives” have to consist of at least two elements. To be able to transform legal quality, their components must be in functional or correlative connection. To be representatives of “legal” quality, they always have to possess, or within them one must always recognize, normative content. That means that “the normative” must be *invariable* in all variants of legal forms.

Let us examine the legal norm as a “representative” of legal quality, i.e. as a structure of its transformation. The legal norm is a source of law and a source of information. Being a source of law, it imparts a norm to behaviour and institutionalizes it, granting certain legal rights and imposing legal obligations upon the participants in social relations. Being a source of information, the legal norm communicates (informs) what should the expectations be of normalcy in the behaviour of the recipients of that information according to the legal order.

Let me recall at this point the structural theory of transformation introduced by Claude Lévi-Strauss. The structural approach to the dynamics inside normative reality is an interpretative one. Understanding normative matter is understanding the mechanism of generating or reconstructing some “text” of signs of legal normativity (legal form, a series of legal forms,

a mechanism of operating of the legal form, legally qualified form of a factual situation, legally qualified forms of a set of persons and situations, i.e. legal institutes, etc.). It confronts the level of observation (of variants of such “texts”) with the level of the constructions (the invariant “language” of generating these “texts”). Structuralism in law explicates the manner in which the invariable legal constructions generate the infinite number of variants of legal phenomena. More importantly, the interpretation in the different variants of legal phenomena reveals the invariable legal constructions. According to the characterization of the legal norm as a structure of transformation its elements are four and consist of the elements of two norm-prescripts, of two connections of condition and rule: “ $p \rightarrow q$ ” (if  $p$  then  $q$ ).

The “ $p \rightarrow q$ ” connection is a correlative one: it works as a mechanism insofar as  $p$  is a condition for the consequences  $q$  and insofar  $q$  are consequences of the condition  $p$ . In its existence as a norm (as a source of law) this correlation is invariable. This means that as a bearer of normative content it is not a product of lesser elements which would give structure to it. Therefore, it is the unit of the “language” of law. Logically, the  $p \rightarrow q$  connection is relation between propositions.  $P$  is one proposition and  $q$ , another. That connection would be understood by legal reasoning insofar as these propositions can be interpreted as possible variants of the structuring operation of the legal concepts according to the context of the rules of the juridical code of communication. In this way the legal discourse is represented as a sequence of transformations. Law becomes a “language” for legal reasoning. The relation between law and reasoning is a relation of invariables in the legal forms, their transformations and the rules of that transformation on the one hand, vis-à-vis thought, on the other.

The normative dependence  $p \rightarrow q$  is a dynamic one: it produces action. This action is legal. The formal correlation between legal norm and factual circumstances stipulated in its hypothesis is a structure of a transformation: it puts into operation the action of law. For instance, in the variant of an emergence of a jural relationship this gives rise to a structure of law, containing diverse variants of its development – the immediate and further consequences.

As a norm of legally bound (*Sollende*) behaviour, namely prescript, the legal norm is a universal. This means that it is a structure of a set of variants of legal manifestations, known or unknown, realized or not, which in principle are interchangeable (equally probably) until they enter into a correlation with concrete facts and are reduced to a single definite variant of legal meaning through interpretation.

As information, the legal norm is a description of structures of a legal order. It communicates what, according to the positive legal order, is the measure of correspondence between norm and actual behaviour. The possibility for this is embedded in its being recognized as a universal rule by everybody. This is the principle of universalizability which underlies the regulative function of law. This principle is understood as the possible variants of “statements” in the normative “language,” of the structuring dependence “if-then” through which the mechanism of normative causality also works. It communicates the condition of the rule of behaviour – in that condition the jural relationship is in an expectant form. The condition is an expectation of the rule. As an expectation the jural relationship can be described both logically and normatively. In a logical sense it is a hypothesis about a legal order which can be thought of by the mind (hence, the potential for cognitive processes, which Niklas Luhmann discusses). In a normative sense this expectation is described in two aspects:

- \* it is the expectation of the operation of the principle of ‘universalizability,’ i.e. this expectation has a universal nature: that hypothesis is accepted and acknowledged by everyone and is thereby a prerequisite for semantic equalization;

- \* it is an expectation of the operation of normative causality: it is the expectation of the possible transformations of legal significance, contained in that jural relationship.

The real cognitive processes through which the legally required (*Sollende*) is transformed into a communication, impart dynamism to the logic of legal prescribing and thus they not only actually impart legal essence to reality. Along with that they impart to the very interpretation of the legal norms as a source of law both its quality of a manner of applying law to concrete cases (through a variant of its “suitable to the occasion” interpretation) and the quality of knowing law in the essential sense of the word (as scientific knowledge): to foresee the possible legal solutions and the conditions for accepting them. In this way knowledge enters law not least as a program for action. That confirms the promise of the very mechanism of transforming legal matter.

8. The indicated transforming function of normative reality is effectively used in legal reasoning. In terms of a lawyer’s professional everyday work legal reasoning is that which is concerned with the norms and other phenomena of law and with the facts of legal significance. According to that

definition, the subject “law” is expressed in the form of significance of the fact, significance of the norm; generally speaking, of significance of the phenomenon. Therefore, we can at once refer to the characteristics of legal reasoning as interpretative reasoning. The explanation of such interpretative activity as is the lawyer’s reasoning is to be sought in coming to know the notions in his mind, their possible specificity and mechanism of realization, stemming directly from, or to some degree conditioned by, the objects whose images they are. These are the legal forms as variants of transformation structures. Consequently, their representation in the lawyer’s consciousness is also specific and must adequately be recognized and explained. The objects of these notions are precisely the concrete objects which “occasion” the lawyer’s reasoning.

Legal reasoning is one of understanding; it interprets, explains and synthesizes, i.e. it gives rise to meaning. It interprets and makes meaningful signs (texts and other symbols) which fact determines its sign nature. It reasons and explicates which fact determines its logical character. There exists a functional link between its sign character and its logical one. Legal reasoning uses the logical principle of proportion – as equality, or as similarity – whenever it draws comparisons between individually manifested significances. It interprets propositions and their sequence through the semantics of legal concepts, technical terms and the words of the natural language. It draws parallels between the achieved interpretations and juxtaposes them. This characteristic of it determines interpretation as an invariable in its structure and semiosis.

In its structure legal reasoning is a complex system. Its elements are the logical, linguistic and legal interpretations which for their part interpret the elements of their own substructures, insofar as the latter are represented (objectivized). The system of legal reasoning functions through making meaningful the connections between the logical, linguistic and legal interpretations. As interpretation is always an invariable elementary structure, functional links are also interpreted. From the point of view of logic legal reasoning is the use of propositions in their interrelations in accordance with rules of validity, and from the point of view of semantics it is the defining of significances according to their relations with other significances in order to acquire importance. With the help of the conception of the thought-sign put forward by Peirce we can establish that the semantic substructures of legal reasoning are chains of significances which are connected functionally through their positional determination by certain interpretants while the logical ones are sequences of propositions whose formal validity is contained in

some interpretant. Legal reasoning functions as a mechanism for comparing (a correlation of difference and similarity) and reference between the formally logical validity and semantic value of the thoughts as objects which are signs (which are represented), on the one hand, and – on the other – their interpretations: So that the connection (the bridge) of interpreting thought – with – interpreting thought is understood as a meaning by the succeeding interpretation. That is why, first, legal reasoning can realize the transformations of law as a phenomenon of re-signifying which includes the fact that it gives rise to them as legal transformations, and, second, to grasp them regardless of the crises or progress of traditional generalizations inherent in theoretical legal thought.

9. The objects of legal reasoning, viz., the legal phenomena, indicate themselves through the position they take in the phenomenal chain as representamina [“representamen” as sign according to Peirce] of these objects. The understanding of the signs is a process of interpreting their semi-osis: the phenomenon-sign is interpreted by a thought which is an inalienable aspect of it. That thought is presented to consciousness as a sign; and that sign is interpreted by another thought. The achieved meaning is in the sequence itself and the understanding – formally – boils down to a transforming of the significance of one element in the sequence into a significance of the other element.

Re-signifying is an effect of the phenomenological method: two elements are linked in a sequence, their position in it is interpreted, and the result is something of a third kind – an intermediary, making meaningful the legal transformation, – through which one element “passes” into the position of the other element, i.e. the significance of one element is transformed into a significance of the other element.

Re-signifying is a measure (substantive measurement); re-signifying is also an expedient organization (formal measurement) of legal reasoning insofar as it interprets legal significance:

The phenomenological method is the method of legal reasoning – it is effective so long as it re-signifies. Therefore, re-signifying is the frontier up to which legal reasoning understands law and its activity of transformation.

Re-signifying is a formula of a semantic sequence in the manifestation (dynamics) of the interpreting legal reasoning. The formula can serve as an expression of:

\* sequential structuring of possible variants of norming and regulating as a result of a transformation, insofar as it is interpreted; or of

\* a semantic sequence of different texts or other set of signs resulting from interpretation (which juxtaposes as similar, and establishes reference between, the significances achieved by it), to the extent that the intermediaries of making meaningful are controlled by institutionalized forms of communication; or of

\* a sequence of interpretations, claims and arguments in a hermeneutic situation; or of

\* understanding and decision-making sequence between rational legal reasoning and practical problems of law; or of

\* conceptual sequence between rationally and interpretatively incommensurate theories and other semantic sets; or of

\* sequence between the activity and the results of reasoning in law: “juridical (rationally constructive) – legal (norming or practically decisive) – theoretical (cognitive),” and so on.

10. In order to clarify re-signifying as a semantic transformation I will use two phenomena important in law, namely the hermeneutic situation of the judge and the “thesis-antithesis” reasoning in legal discussions.

The hermeneutic situation is understood as an institutionalized situation of a dispute about semantic harmonization between legal precepts (legal rules) or between legal precepts and legally qualifiable facts where legal understanding sets this dispute as a legal question, directed towards its solution and its results, so long as they are justified, are objectivized as the Motifs of the judgment. This situation of jurisdiction and in general the situations of achieving mutual conformity, of substantiating the correlative function of harmonization, I define as synharmonization (from the Greek). The transformations in law have to be institutionalized so that legal reasoning can make them productive – this is illustrated by the councilors (*consilia legitima dantes*) in the Middle Ages, during the process of codification in Europe, in the role of the European Court of Justice. Institutionalization is necessary both to the stability of the rules of the respective discourse within the framework of the legitimate order of law and to the semiosis of legal reasoning. I oppose the concept of semantic synharmonisation, reached in the specific for law situations of justice, to the political theories of power and powers,

including the similar theories concerning the legislative power, where instead of legal we have a purely politico-logical syllogism.

We see an essential difference between the reasoning of the judge and the others involved in processes of dispute and the reasoning of the legislator. However, from the position of a political theory the formal distinction between the interpreter-legislator and interpreter-judge does not play an essential role because the subject of such a theory is not interpretation but (political) power. In a *théorie juridique de l'état* such as is that of Michel Troper, a syllogism can be constructed in which the great premise is the author's conception of power which is given prominence, the little premise is his conception of the competencies and the conclusion about the essence of the interpretation cannot be other than subservient the premised theory of the state. According to him, interpretation is the result of the system of interrelations between the public authorities. As such, even if it is called a legal theory it is of necessity a political one. Ultimately, such a theory makes relative the normative nature of the Constitution, investigating the Constitution, too, within the context of the links between the theory of the state as a system of principles and rules, and the overall structure of the legal system. The syllogism in question only formally logically resembles the legal one whose aim it is to solve a legal case. A theory of practical legal reasoning which seeks to understand law and not power, even when it prescribes competencies, is bound to carry out a phenomenological reduction of interpretative activity as a social phenomenon and to focus upon its essential features. Only from so reduced a starting point can it further reflect on the increase of legal meaning (e.g. of the text of a given constitutional ruling) as a result of "the interpretations made of it" and the transformations of legal meaning thus achieved.

I share Kelsen's belief in an optimally pure explanation of the legal phenomena and assume that this is a prerequisite for the development of law. From this position the above-mentioned fourth pattern provides the greater number of challenges and topics for discussion.

To separate the law from its political framework and political grounds for legitimacy proves to be difficult. *Acquis Communautaire* is a genuine legal phenomenon unbound with political basis and justification. Being a leap in the course of development of law, it can hardly be placed in traditional constructs. It will be much easier to politically legitimize the transfer of sovereignty through a traditional structure such as the European Union – a union between States bound by international treaties.

However, this understandable and recognizable structure can not disregard the *acquis* of the European Community. It is influenced by the economic community and in fact serves as its legitimation and representation and strives at the overall objective of the Community – common legal order and common jurisdiction for control.

As is well known, the European Court of Justice is the body ensuring both the institutional equilibrium and the legal identity of the European Community. The significance of the uniform application of the *acquis communautaire* is not expressed merely as a guarantee of the rule of law or as *causa finalis* of the cooperation between national jurisdictions. It is much more of a process of creating a new legal order through the resolution of disputes about semantic unconformity. This power it has has caused the Member-states of the European Union to sign declarations on subordination to its jurisdiction as regards a number of acts of the so-called Third Pillar before the coming into force of the Treaty of Amsterdam with a view to utilizing and facilitating interstate cooperation. We find another consequence in the fact that through the case-law of the European Court of Justice a system of rules emerges which can actually be described as “European administrative law”: the displacement of national borders inwards respectively, inwards and “sideways” – neighbourly (towards regions) and outwards (towards Communities) gives rise to the need for a general (regional and Community-wide) administrative arrangement; the semantic legal equalization of the social communities within the new borders gives rise to the need of approximation of the administrative servicing on the basis of the common principles of the Member-states.

11. A lawyer reasons as he/she interprets, including his/her logical propositions, but that interpretation is transformed into an argument through the so-called “thesis-antithesis” reasoning. As a principle of the practical discourse concerning the switching-over of the semantic results of legal communication the “thesis-antithesis” principle is not only a technique of justification and of quasi-verification in discussions in court or in scientific fora nor is it only a particular logic of the discourse which, unlike any logic, make syntheses, including through the regulated passing of one discourse into another with the aim of filling up the so-called logical discontinuation (Habermas, Toulmin). When the interpretation is brought out in public this antithetic principle achieves conceptual guarantees, too. They can be assessed positively or negatively.

Viewed historically, the set of legal concepts forms a sequence of transfer of significances, of signifying and re-signifying, i.e. it illustrates a genealogy of interpreted significances.

A fresh significance for a given concept, interpreted and adopted in a given discussion, preserves its correlative links with the rejected in the same discussion significances through bridges of meaning. These significances, rejected and bordering in meaning with the newly formed concept play the role of conceptual boundaries, of an immediate historical context and a boundary of the origin of this new knowledge. Likewise, the significances which have been discussed as distinguishing or as increasing the volume of the old significance out of which the new one has originated preserve in historic terms their functional connection with it but do not play the meaning role of a genealogical context because they are logical borders discovered in the course of the discussion which it has manifested inside the concept.

The rules and procedures of admissibility and control of knowledge make the discussion itself the foundation of the meaning which will “continue on its way” in the development of scientific and practical reasoning as a re-signified significance. For its part, it will – in the next discussion – re-signify it as its “bearer” and foundation, and so on: from discussion to discussion the legal significance will be transmitted, rejected or asserted.

The series of discussions – scientific, including instructional, judicial, political understood as a semiosis of legal communication – is a phenomenal series of re-signifying which expresses the growth of legal knowledge.

The phenomenological understanding of the rational (theoretical and practical) initiatives for achieving fresh knowledge consists in the fact that their sequence is a sequence of switching-over of rationally and interpretatively incommensurate, semantically non-identical significances, theories and points of view (as a semantic sets) but “having entered” a series through the discussion because the rules and procedures of admissibility and control of knowledge have made commensurate (through re-signifying in the “publicity” and before its control) and by that have connected these significances. The greater the contrast is between the semantic totalities, the more productive is the discussion of results. The closer the semantic totalities are to one another, the greater the risk is of semantic equalization to be the result instead of it being a correlative transformation.

12. The phenomenology of re-signifying as a kind of transformation, which is objectivized in a legal discourse achieves semantic continuity of the

legal matter from the point of view of interpretative legal reasoning thanks to the flexibility of the above-mentioned legal construction. This is a positive result insofar as it demonstrates growth of legal knowledge. It is a negative result if – at the expense of comparability and the sought for compatibility assessment of the results of the interpretations – the interdependence between the various kinds of legal order is substantivized into semantic equalization. This is an age-old aspiration and tradition of world legal science and practice: the utilization of legislation, e.g. the creation of uniform codes. This utilitarianism I can assess as an original technique for the achievement of a “fit” (in the sense imparted to it by Dworkin) because the utilization of legislation achieves uniform interpretation.

It, for its part, through its elucidating effect achieves: 1/ the advantage of a quasi- institutionalized pre-judicial understanding vis-à-vis the subjective arbitrariness of individual interpretations; 2/ narrowing the distance vis-à-vis the “authors” of the code in question with a view to its ultimate practical purpose; 3/ simultaneous increase of the semantic autonomy of the text itself through its examination as a meaningful totality; 4/ a transforming of normative expectations into cognitive ones (it informs, elucidates the uniform and entire meaning). But is the semantic equalization a plus or a minus?

Or, rather let us look at another aspect of the similar and connected with this topic of discussion: the interdependence between the international humanitarian law and the *acquis communautaire*.

Beyond any doubt, the interaction between these two proves productive in the social realm – good examples present the areas of defence, cultural heritage, public health, and environment. But in law as such, the emergence of new phenomena always bears the risk that the transformation of two conflicting legal orders will halt on the level of correspondence, reconciliation, without evolving to a new phenomenon. I offer as a topic for discussion, whether to pursue of politically and socially justifiable strategy – to achieve legal balance as Ideal of the legal order, or along with that to create a new phenomenon which aside from everything else is a challenge for the legal theoretical thinking.

If in practice this is evaluated positively, is it the same when the phenomenon of *acquis communautaire* is minimized at the expense of the multiplication of *acquis*: EU-Acquis “Justice and Home Affairs,” Schengen-Acquis etc.? As is known, the impact of *acquis communautaire* on national law requires a transformation of national legislation. The multiplication of a large number of *acquis* as new legal systems of interstate cooperation as a result of the

semiosis of legal communication is also under the impact of and is a continuation of the trend started by the unique phenomenon of legal system: *acquis communautaire*. However, the dominant of *acquis communautaire* decreases under the influence of this new dominants – new kinds of *acquis*, the strength of the European Union and the individual Member-state, the need for preserving a common language of understanding with other subjects of international law etc.

Thus for example, the relation “national – community” interacts with the relation “national – international” and with the relation “international – national – community.” This mutual dependence lowers the degree of transformation (as an absolute value) in favour of close parallelism. The new discourses, including those with the associated countries of Central and Eastern Europe described in the series of Road Maps, the first White Paper and the ones following it, Accession Partnership, etc. should resemble written directives less and case-law more, which identifies positive law in the basic treaties.

The essential transformations are expressed in the achieved semantic diversions in situations of deliberation, which turn into cognitive diversions as well as the cognitive diversions in the same situations – into semantic ones.

The semiosis of the transformations in law is a semantic interpenetration of separated and confronting semantic totalities which are of importance so long as the semiosis follows the phenomenological principle of positional difference under the transmission of significances, ensured by the rules of discourse, and so long as the global interaction does not boil down to utilizing interdependence.

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