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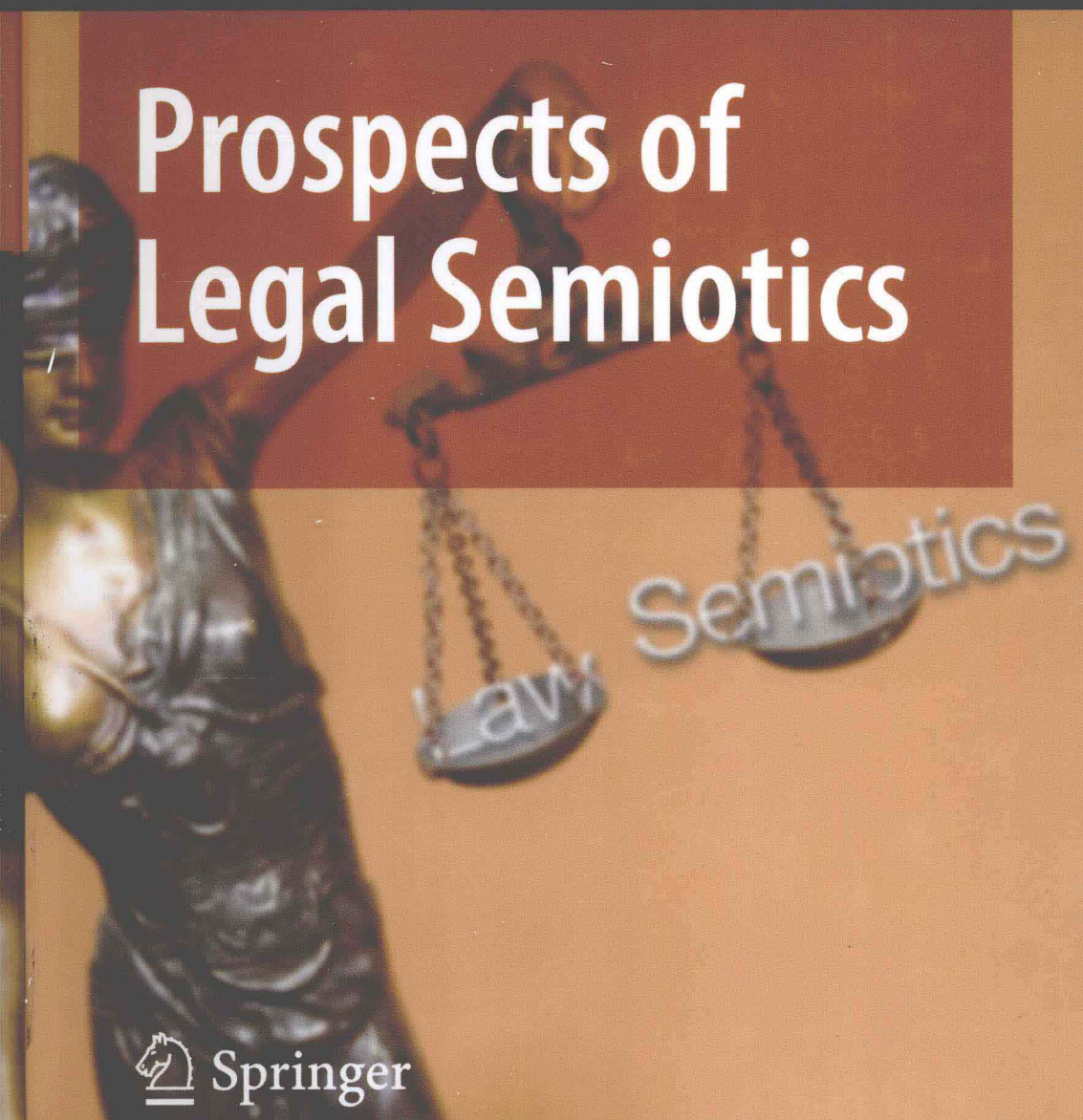
Editors

Prospects of Legal Semiotics



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Promises and Prospects of Legal Semiotics—An Introduction

Anne Wagner and Jan M. Broekman

1 Promise and Prospect

This book's title alludes evidently to J. Balkin's "The Promise of Legal Semiotics", an essay in 1990/1991 that was path breaking at the beginning of that last decade of the twentieth century (Balkin 1990). Its text was conceived in the wane of the Critical Legal Studies Movement and showed undoubtedly new ways to understand law's need for enduring intellectual work that would provide new techniques of hermeneutic nature and lawyers' self-understanding. The critical attitude inherent to the CLSM was transferred to a reinforced responsible social critique pertaining to the roles of law in society (Unger 1983). Both, interpretation and critique were eagerly received and supported the basic ideas of what then was called "a new school of legal semiotics". This movement-in-spe should broaden the perspectives of legal rhetoric whilst covering ideas of post-structuralism, legal feminism and post-modern multiculturalism in law and legal studies (Wagner et al. 2005). Balkin's text belongs to a short-living but highly profiled conglomerate of articles in well-established legal journals which promised to become a hinge for semiotics in legal studies. The cluster was originated by remarks in Jeremy Paul's 1990 "The Politics of Legal Semiotics" and concluded in Duncan Kennedy's 2000 study "Semiotics of Critique". All this was object of reflection in Balkin's recent essay "Critical Legal Theory Today" (Paul 1990; Kennedy 2000).

It interests how some strong feeling of "promise" forms an almost seamless connection between CLSM and semiotics of law (Balkin 2008). The first focused on undermining the claims of coherence that characterized legal scholarship, especially as developed in Civil Law scholarship and practice, especially in the emerging European Union Law (Broekman 1999). That opened a promising road to understand and accept the idea of a radical indeterminacy of legal doctrine. The semiotic appreciation of contrasts—so elegantly adapted in the construction of Greimasian squares which put in-depth legal viewpoints in perspective (Greimas

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1968, 1983)—played a role in understanding legal doctrines as a series of principles and counter-principles, rules and exceptions, profiled policies and contrasting policies. Why were these never effective in legal resolutions of social conflicts? (Greimas 1970) The idea has fit the social and intellectual drives of the CLSM and also attracted legal semiotics. A dominant question remains, however: is the downfall of the coherence-idea in legal thought formation an issue of legal theory and jurisprudence, or is this idea rooted in the unbreakable and close ties between law and politics? The decay of coherence in legal conceptualization could never be performed in theory alone; it relates with necessity to political situations and their analysis. The Paul–Balkin conversation had this theme as a repeatedly profiled question: is the outcome of semiotics that "law is with necessity politics"—also in a society with post-modern principles at the horizon, and with multiculturalism as its forthcoming feature? (Balkin 1990; Paul 1990). Emphasis on the attitude engrained in the expression "promise" is evident here!

Balkin suggests in the tradition of the most far-sighted authors in CLSM context (Balkin 1990):

> When people speak of the relationship between law and "politics," they mean law's relationship to the many different forms of power—economic, social, cultural, political, military and technological—that law constrains, enables or propagates. They also mean the ideals, ideologies and arguments that people use to justify these forms of power. "Politics" refers to people's contrasting visions and to the values that they want to realize or recognize in public life. But it also refers to the power to realize or recognize those values and visions. So when one considers the relationship between "law and politics" one is also interested in the question of law and power—how people justify and legitimate power directly or indirectly through law. And one must also account for law's own methods of proliferating its own power, whether it be through legal concepts, legal institutions, legal culture, legal education, legal officers, or the legal profession as such. In any case, law is not simply politics; rather it is a surprisingly plastic medium of discourse about power and for the exercise of power.

The relation between law and politics, and certainly the question whether law is politics, is not definitively clarified with these reformulations about law as a social power. Law is in semiotic perspective *a discourse of power*, and that formula opens new dimensions (Wagner and Pencak 2006). Once citizens become aware of the fact that they are speakers of a specific discourse, they are indeed empowered *to speak differently*—to each other as well as to their respective social institutions. The different speech could be seen as the result of *legal semiotics as criticism*. This is far more than a harmonious image of society speaking a newly transformed language! To take the language of law in one's own mouth is a dubious gesture, as history has demonstrated clearly. Balkin formulates:

> (. . .) by choosing to speak in the language of law, powerful people and interests can sometimes be called to account because they try to legitimate what they are doing in those terms. The people they take advantage of can argue that this is a misuse of law, an illegitimate attempt at mystifying rhetoric. They can appeal to the values that law seeks to protect to promote better, more just, and more humane practices and forms of human association.

No wonder, that at the end of the first decade of the twenty-first century, the Balkin "promise" formula is still remembered as a strong sign given by legal semiotics. This is well documented by the 2009 Special Issue of the International Journal for the Semiotics of Law that offers papers from the 2008 International Roundtable in Boulogne-sur-Mer, France, bearing that wording as its title (IJSL Vol. 22, No. 4). Some chapters of this book go back to ideas exchanged and intuitions given a textual character during the conference. Does it mean that lawyers and students of semiotics are still under the spell of the "promise" of legal semiotics? *Quod non,* as this book clearly demonstrates. "Promise" has conscientiously been changed in "Prospect". What does that mean?

Promise and *Prospect* differ importantly; with the consequence that contemporary legal semiotics does not unfold its major ideas and practices in the spirit of promises but rather be represented under the heading of *prospects*. Is a *promise* an expression of hope, of future development, of suggestions beforehand, a *prospect* is rather the anticipation of emerging powers and activities, a well delineated work that could be joined, a project unfolding, a view of things within the reach of eyes. The latter is exactly what this book is about: it shows multiple thoughts, projects and perspectives to readers who are witness of unfolding ideas and realizations. With Umberto Eco, one should keep in mind that readers play always an active part in the interpretation of texts—lawyers as readers are therefore outstanding forces in the unfolding generative process of legal texts (as Eco's *Role of the Reader*, 1979 shows). The change from promise to prospect appears to be a sign in its own right: semiotics of law as offered here, is a sign in reach of what (Sebeok 2001) once called "global semiotics". Various issues are important in what is within the reach of our eyes.

2 Fundamentals, Criticism and Communication

Among the variety of issues included in a prospect on legal semiotics are three outstanding themes. Many of them have historically important ties with preceding developments in legal theory and legal thinking in general. Three are selected to represent those general developments most prominently: fundamentals, criticism and communication. The *first* pertain to a sophisticated and often differentiated scrutiny of the foundations of legal semiotics, mostly circling around the age-old question about what law is in essence. The *second* was definitively at home in the critical considerations of the CLSM, which developed in the US, and European Critical Theory with in particular the so-called "Frankfurter Schule" and its "Institut für Sozialforschung" established shortly after World War II. The critical dimensions focused the relation between law and politics, in particular the dimensions of social justice. These dimensions transformed in contemporary legal semiotics into a multicultural critical theory of law. It is thus understandable how a *third* development in legal semiotics pertains to communication as an issue in its own right. The influence of mixed legal systems and law integrating non-formal legal views in society became provoked by for instance social movements, citizen participation

and migratory movements. Those occurrences emphasized again and anew how law functions only on the basis of communication between citizens and legal subjects. A closer look at those three themes enables the reader to understand the design of this book and its various contributions.

2.1 A Changing Concept of Law

A constant interest in a different understanding of law and legal expressiveness is widely awakened by the stronger global coherence of legal systems—a development, which was in the last decades of the twentieth century primarily understood as forces that merge the Common Law and the Civil Law legal systems. Today's semiotics no longer focuses this particular merge but understands how legal semiotics must refer to mixed legal systems, which merge continuously during the process of global cooperation. Thus Boaventura de Sousa Santos points out already in 1995 (Santos 1995) what he later calls "interlegality":

> Rather than being ordered by a single legal order, modern societies are ordered by a plurality of legal orders, interrelated and socially distributed in different ways.

This process has become most challenging in so far as classical definitions or circumscriptions of law and legal discourse, at its minimum the idea that law can bedelineated as a specific discourse (a point debated in Hart's positivist mood and vehemently disputed by Judith Shklar (1986), are now put in perspective and need a new global expressiveness. "Global" is here not only a geographical index, but also an index for social meanings of what law is and should be. Legal semiotics refers to Roberta Kevelson's slogan and book title "Law as a System of Signs" (Kevelson 1988), which indicated a point of interest and of fundamental insight into the basic features of modern law, which with the idea of a peculiar systemic character shows the dynamics that law and semiotics share:

> Semiotics in law attempts to show the process of legal procedure as it develops in each case, and as the system of cases constitutes the moving parts of that moving and developing whole.

In general one could say that modern legal semiotics questions the traditional definitions or circumscriptions of law, and underline how there is no legal semiotics without an elaborated theory and philosophy of law (Kevelson 1996). That conclusion is often problematic for legal students and practitioners who want to become active in a field of legal practice without considering its non-practical implications, and thus qualify semiotics in law as a form of legal philosophy—rather a hobby than a necessity for lawyers! So the change of the concept of law from the days legal semiotics was projected under the heading of promises has consequences for today's understanding. Merging, mixing and provoking the dynamism of law (Wagner 2005a) as a social component of life within global dimensions means that the law-politics relation is no longer on the foreground of considering law in the light of semiotics and does no longer create harsh contrasts between the two

discourses. This changed situation strengthens the critique as coloured by multicultural dimensions and weakens the role of oppositions between left- and right winged viewpoints in legal discourse and the necessary foundations of law. It also influences a vision on the communicative effects of legal speech acts and of law in its entirety (Wagner 2005c).

2.2 *Critique, Multicultural*

Balkin's "Promise"-article (Balkin 1990) confirms a fundamental connection between critique and semiotics in saying that

> ... historical deconstruction, and the associated phenomenon of ideological drift, shows the contextual nature of the political valences of legal, moral, and political ideas over time. Yet ... it is often possible to see how existing legal, moral, and political ideas can be "flipped" to serve radically different political ends at one and the same time. This deconstructive "flip" is a synchronic function of the sign, while historical deconstruction and ideological drift are diachronic functions of the sign. The recurring debate in the Critical Legal Studies movement over whether legal doctrines are always "flippable" (and thus never have a determinate political valence), or whether they have a particular "tilt" which is a function of their historical situation (and thus can meaningfully be said to be progressive or conservative at a particular time) is a manifestation of these two different ways of looking at the signs that constitute legal doctrine. The former view is synchronic, the latter diachronic.

That critical function could, however, be expanded when we conclude that semiotics has in itself no political basis to unfold critique of any sort, but solely an epistemological basis (epistemology meaning "concerning dimensions of knowledge") so that the epistemological dimensions of law considered in semiotics, determine the multiple meanings of the concept (Wagner 2005b). This is the most important where a *plurality* of orders determines the modern world. The latter plurality forms a whole scale of viewpoints for future political experiences and legal consequences, becoming visible in changes in legal education, in lawyers never completely fulfilling promises but rather developing visions on cases and problems so that their task—even including the many decisions to be made—seems a new form of looking forwards and unfolding a new "view with the mind". The latter descriptions form the semiotic attitude, which is required to perform the change from promises to prospects. The critical dimension in semiotics, inherited from the CLSM, is rather a guiding principle in the confusing multicultural reality than a set of commands or the fixation of orders. In that regard, one should say, is the expression "a progressive legal semiotician" a pleonasm, because all semiotic projects and attitudes include progressive ideas initiated by new epistemological perspectives.

The latter perspectives show at least three presuppositions at work, which form the background of all contributions to this book. One is *that all semiotic work contributing to the construction of legal discourse has to operate on the basis of law understood as a language*. Next, and closely connected with the first, is the Peirce's idea that *law is continuously in parallel with systems of signs* (Peirce 1931). That was also intended when Kevelson choose the title of her 1988 book on Law as a System of Signs—both "system" and the plurality of signs pertain to the language

metaphor. A third is, *that law has always to be conceived as a cultural phenomenon.* This seems formulated under the influence of a certain melancholy of postmodernism as well as the correlated fascination for multicultural determinants of the modern world. Critique is here inherent to the semiotic unfolding of those three presuppositions; human individuals (even in the garment of being a subject of law) embrace a critical attitude when they acknowledge that culture and ideology just are what allow individuals to know how to follow rules or conventions. Law is thus not a discourse of norms, commands or related social signs but rather an all-embracing language to conceive such entities, which leads to the construction of social institutions (Wagner 2005b). This fits Balkin's remark that the purpose of any semiotic activity is in the understanding of *sign systems, which create meanings* in the heart of every pattern of culture. One should underline in this context that each individual in each cultural setting is born to unfold its personal properties *within* an already existing system of law—as a language: an observation that reinforces the influence of language as a cultural data for the engenderment of human individuals in a society. It is remarkable how the semiotic approach to law explores the limits of language in this context, focusing visual semiotics in order to understand the moves from word to visual sign and vice versa.

2.3 Communication

This peculiar change in legal criticism and its emphasis on language are features of nearly all contributions in the book. They put the normative and behaviours-restricting task of law in perspective and find even in these legal epiphenomena an element of a creation of meaning and sense that has to be based on communication between human individuals. This embraces an attitude, which is not the traditional legal one with its emphasis on a first-class performance of the vocation, but rather a holistic stance that requires thinking broadly and decides moral issues as cultural components (in contrast to playing blame-games). As a consequence, legal performance in semiotic perspective includes a growing awareness about the always-implied question in legal cases: "in whose interest are the various decisions at hand made?" This acquired thought-pattern explores and communicates problems that require value judgments and value-laden trade-offs.

It is often difficult for lawyers to notice how the dichotomy of decision-making is replaced with a communicative practicing of insights in the fact that everything does not have to embrace an either/or solution. To distance oneself as a lawyer from these dichotomy patterns is often difficult and frustrating. It is difficult because the communicating power of this pattern touches the very identity of lawyers' activity; and it is frustrating because of feelings like: "for what other purpose did I spend all those years in a Law School?" It shows under the heading of a concept of communication, that lawyers have a fixed understanding about the world around them as well as their own identity and that they are not educated to use this or alternative sets of insights for being creative.

Such lawyers' creativity focuses widely held artifacts, symbols, beliefs and myths, and provokes oftentimes various forms of direct participation as a viewer, reader, listener or other sensory responses to aspects of general culture. Rosen (Rosen 1990, p. 517) noted that:

> the legal process incorporates, shapes, and transforms cultural behaviors and attitudes. That there is a complex dependency between law and culture is not just a consequence of citizens bringing to the law their cultural baggage and the law seeking a legitimacy that speaks to citizens. Social justice (or at least a morally rich pluralism) depends not only on the autonomy of law but also on the interdependencies of law and culture. Interdependence is normatively required, at least in part, because not only must the law morally matter to a culturally heterogeneous population, but also the law ought to be able to speak to those whose claims it does not currently recognize.

It should, however, remain in the forefront that each sign-activity needs what Peirce evoked as a social world, so that semiotic activities in general need to keep a relation with any form of understanding and interpreting communication. Although, as Bergman underlines (Bergman 2009), communication is not a primary factor in Peirce's philosophy (Peirce 1958), there is absolutely a need for semioticians to keep in mind that there cannot be any sign-activity without communication. Whether semiotics is *grounded* in any concept of communication is another question and not a subject of reflection in the context of this publication.

3 Deconstruction and the Legal Semiotic Attitude

The deconstruction mode is by no means a following of Derrida or a symbol of postmodernism; it rather forms a substantial part of the semiotic approach towards or in law. All chapters of this book demonstrate that approach clearly, and in particular the first four chapters who focus on foundational issues.

3.1 Philosophical Dimensions

The following chapters analyze law as "legisigns" (Kevelson's variation on a Peircean expression), which she described as

> ... provisional judgments, held and acted on as if they were truths, although they are in fact the product of an ad hoc community that comes together out of common purpose so long as it is certifiable, verifiable, useful, and is not a bulwark against open, free inquiry and discover. Once the framework for consent is clearly seen as inadequate in the light of new discovery, new significant knowledge, *new Reality* in short, this referential complex legisign must then be either reinterpreted if possible or de-composed if reformation and modification is not possible without totally deranging and disfiguring in procrustean fashion the original (that is, currently established leading principle) (Kevelson 1996, p. 51).

Jackson explores in this context the *basic differences in the identification of the nature of legal semiotics*. Is law a phenomenon of logic, discourse, or experience? A widespread agreement forwards the idea that law embraces a grammar of modalities

expressed through different logical and semiotic systems—but are those modalities to be understood as logical relationships external to but expressed by legal discourse, or are they simply particular forms of legal discourse? Notice, how the deconstructive approach refers to the presupposition that law is a discursive phenomenon and hence has to be treated as a language. This does, however, not do away with the fast that legal discourse also expresses an *experiential* dimension (Jackson 1985). Law has not only the task to be effective, but also show affective dimensions, which come more and more to the fore if one considers law's inter-legality and its multicultural dimensions in mixed legal systems. Whereas criminal law adopts for instance a "penal" model—prohibition backed up by a negative sanction (fine, imprisonment, etc.) imposed by the State, private law deploys powers as were they parties to a contract by mutual agreement, which underline obligations towards each other. In so far as states are still able to format a legal system, a "promotional" function is widely used to further particular activities by the promise of a reward (e.g. tax incentives). A recent fundamental discussion pertains to the question whether the traditional deontic operators successfully account for this "promotional" function. The logic of legal expressiveness is remarkably researched and they engender important philosophical questions, which lead to the foundations of legal semiotics.

Broekman notices in his chapter on "Firstness and Phenomenology" how close encounters between Peirce and Husserl show strong ties between semiotics, law and philosophy. Peirce's idea of *firstness* (consequently followed by *secondness* and *thirdness*) has been widely discussed in many Peirce interpretations (Peirce 1958). The idea is a key concept that inspired semiotics. One concludes in hindsight that not *thirdness,* but *firstness* needs full attention in philosophy and semiotics. Explaining *firstness* as an attitude inherent to the sign, one refers to phenomenology as a major field of semiotics, so that semiotics can in its turn reveal the structure of legal thinking.

There is a remarkable parallel to this *firstness* in twentieth century philosophy, the "instellungsänderung"(attitude change, or change of approach) in Edmund Husserl's phenomenology (Husserl 1952, 1954). This makes us understand the complex structure of transcendental phenomenology in its close relationship with semiosis and semiotics. Peirce and Husserl accompany and even foreshadow the linguistic turn of modern philosophy and its implicit phenomenology of social relations.

But is semiotics only to be *applied* in legal practice and legal scholarship, or should the link with application as the basis for legal practice becomes transcended in approaches to legal semiotics? Should a semiotic approach towards law for instance lead to a total *re-engineering* of law and legal practice? The character of *firstness* changes and highlights the relevance of semiotics.

de Ville focuses on Derrida's book *Given Time I. Counterfeit Money*, with the gift as its main theme as a meaning-giving subject. Such philosophical considerations have many forms, which altogether express the three presuppositions mentioned as characteristic for a prospect of legal semiotics. They focus the concept of law in a new light; renew critical dimensions and search for new meanings in the concept of communication. In his definition of justice in *Force of Law*, Derrida refers specifically to justice as a "gift without exchange". It seems essential in order to understand

what justice entails that the (perfect) gift be understood beyond our epistemological dimensions of meaning and sense. Derrida's analysis of the gift is essential for politico-legal decision-making. To understand the "place" and "nature" of the gift, we see with Heidegger how to rethink Being and Time in its relevance for semiotics. Marcel Mauss's *The Gift* inspired Derrida in detail. The exchange of gifts lies at the origin of law, morality and economy, Mauss suggests—also in our modern society.

Derrida agrees, but shows that the gift does not fit any terms of exchange. A gift can only qualify as a gift if it expects no return. Heidegger's *On Time and Being* shows that the gift (involving no return) is "situated" beyond the ontological difference, beyond the difference between Being and beings. The gift is in close association with *différance*. This leads to "psychoanalytical" themes: forgetting, sexual difference, repression, mourning and the death drive, which are analysed in the essay with reference to Freud, Abraham, Torok and Heidegger, as well as Derrida. De Ville concludes about the impossibility of a gift in all politico-legal meaning and decision-making.

Salter discusses the key role of semiotic issues, whilst combining theoretical and methodological analyses. Those considerations focusing Derrida and his possible approach to semiotics, come close to dialectical approaches towards law from Hegel to Adorno. He argues that any interpretation and application of legal signs and symbols remains hitherto an underdeveloped area in contemporary dialectical approaches focusing law. He thus discusses the possibilities for developing a model of legal semiotics based upon the distinctly dialectical theories of language, culture and society contained in the writings of Hegel and Theodor Adorno. It builds upon, and contributes to, a growing interest in Hegel's theory of language more generally. For both Hegel and Adorno, it is not possible to develop a viable theory of culture, social integration and cultural / intellectual development occurring over various transitional stages without considering how the semiotic dimensions of human experience operate. The routine employment of various signs associated with for example "law", "legality", "legal procedure" and the relations between them, help generate, sustain and modify an overall and collectively shared interpretative framework. Focuses is thus on only three of the host of possible themes that a Hegelian semiotics of law could address. They are: the interpretation of core semiotics distinctions; the implications of the mediating role played by signs; and, thirdly, the application to our lived-experience of legal signs of a semiotically informed methodology of "immanent criticism". The latter approaches advanced research into contextual aspects of semiotic themes. A self-critical view on "law and semiotics" has yet to be achieved. The Hegelian tradition rejects the idea that the relationship between legal signs and the signified is *essentially* arbitrary. That tradition treats such an interpretation as an arbitrary and ideologically-loaded construct, which articulates specific pathologies of late modern social, cultural and political relations. Instead, one should seek to expose remnants of the mutual implication of these two strata from within our concrete life experiences of signs. Its critical methodology aims to analyze contradictions between the implications of law's normative expressions, and the impact of the actions of legal institutions upon specific groups of human subjects. Such a critical approach contrasts actual institutional

outcomes with the implications of the norms they continue to rely upon in order to secure their legitimacy. That is, however, only possible if we grasp the significance of the potentially in a dialectical manner, mutually defining the nature of the sign / signified relationship. This confrontation leads to a practical reasoning about the sciences in which, generally spoken, phenomena of language and interaction become complementary, and emerge as sources of mutual enrichment.

3.2 Communicative Dimensions

Although Peirce's philosophy has no clear theory or circumscription of communication as a subject for semiotics, it plays a major role. The pragmatic fact that there is no sign-activity without communication is a strong point, which several authors of this book agree upon in the choice of their subject and/or their theoretical background. For Peirce it was a more or less foundational idea that could serve pragmatic approaches pertaining to the question of social cohesion and human togetherness in social patterns. This becomes an issue of further consideration when Kevelson brings law and semiotics together. Legal discourse and social cohesion appear to be most effective for her if both are understood in terms of social contract (Kevelson 1988; Kennedy 2000):

> Peirce's pragmatism is grounded on the conviction that value in thought and in reality accumulates through a process of transacting and exchanging ideas by persons who contract to accomplish a mutually agreed-upon purpose.

Habermas highlights, in contrast to Kevelson correlative and non-contractual aspects of the same issue (Habermas 1995, p. 131). He states, that in a multicultural society the inclusion of every form of life that has rights consists of the recognition for everybody to have

> the opportunity to grow up in the world of cultural heritage and to have his or her children grown up in it without suffering discrimination because of it. It means the opportunity to confront this and every culture and to perpetuate it in its conventional form or to transform it.

Both opinions show another issue: signs thus relate to deep structures of social reality whilst creating a space for sharing among participants. The signs, which are contours of a legal system, imply multiple dependencies upon the needs of various communities of inquirers in their diverse guises and settings.

Mapping the contours of a legal system equals an interpretation of a system of legal signs. That interpretation of law is apt to contribute to the changing needs of institutionally anchored functions, like those of judges, lawyers, legislators or citizens. So it is not necessary to unfold a coherent theory of communication in legal semiotics, but it is essential to highlight that communication is a prerequisite of sign-activity in general. This insight has, however, many facets.

Wolcher reminds us that Nietzsche once underlined how the great danger of direct questioning a subject *about* the subject is in the fact that it could be useful and important to interpret oneself *falsely*. Wittgenstein generalised Nietzsche's

warning in saying "Nothing is so difficult as not-deceiving oneself". One should try to heed both warnings. It shows that the idea of the grounding subject represents a desperate and ultimately futile attempt to repress awareness of (and evade personal responsibility for) the essential sadness and tragedy of the world. It alleges that the most thought and reason can ever do is provide the human body with a thin tissue of grounding statements made up of symbols and images. These symbols and images will never span the existential distance between the grounding subject and the causal subject, ends from means, words from deeds, and, more generally, human suffering and all of the seemingly endless casuistries that we offer to justify it. Go ahead and dream your dreams and plan your plans—but do not *ever* try to convince yourself that "they" (the dreams and principles) genuinely underlie and justify what you do in the world! *Using* principles of justice is natural if not inevitable. *Feeling* principled and just, on the other hand, makes for a hell on earth that can be just as horrible as the hell made by those who give unbridled license to a ravening will to power.

Lippens explores the works of the painters Pollock and Rothko, thus expanding the reach of semiotic analysis. Continuing Francis Haskell's exploration of prophetic painting, he sets out to illustrate how emerging, diagrammatic "forms of life", and the codes of law and governance that reside in them, tend to materialize first in the visual sensory sphere before they do so conceptually. Using "Deleuzoguattarian" thought—Deleuze's work on painting in particular—he shows how Pollock's and Rothko's work, painted between 1945 and 1950, harbours traces of an emerging late-modern "form of life" where vitality and radical freedom are inextricably linked with precautionary tension (and vice versa).

Bainbridge examines how law is "a powerful (legal) fiction... crucial to the exercise of political power and legal authority across many different fields, especially the 'cultural'" (Redhead 1995; Husserl 1913) and connect it to popular culture—namely the impact of popular culture on public perceptions of law (the signifiers) and justice. He examines the context in which the study of popular culture in relation to law has developed and its principal goals and working assumptions of those engaged in this work. He thus focuses what been carried out in view of perceptions of law and justice as affected by popular culture.

The term "law" has many meanings, not just in legal institutions (where it can refer to positivist law, natural law, indigenous law or police powers) but also in the wider culture. Law seems to be a malleable concept, its definition often depending upon the context in which it is found. Despite this, legal and cultural theorist Steve Redhead notes 1995 that conventionally "in jurisprudential and political theory" law is taken as a given—"we assume that we know what it is and where to find it, and also what it does" (Redhead 1995; Husserl 1913). Redhead goes on to suggest that this is in fact "a powerful (legal) fiction which may be crucial to the exercise of political power and legal authority across many different fields, especially the 'cultural'".

Exploring Ferdinand de Saussure's notion of *semiotics* as the study of communication, one is witness of how communication practices can be broken down into a series of units called *signs*. A relation between the signifier and the signified is called *signification*, the process by which meaning is made. When we are confronted with

images, such as a statue of justice, an image of a courtroom, or the figure of a lawyer or a policeman, we can understand them all as the physical *signifiers* of the *signified*, called law.

Massimo shows how "semiotic landscapes" are patterns of perceptible elements that individuals come across in *public* space. "Semiotic scenes" are patterns of perceptible elements that individuals come across in *private* space. Whereas semiotic scenes are mostly controlled by individual agencies, and are therefore relatively stable and transparent, semiotic landscapes are mostly controlled by collective agencies, and are therefore relatively unstable and opaque. Large migratory phenomena usually modify the semiotic landscapes of contemporary cities. New somatic features, new kinds of cloths, new gestures, postures, and movements, new feelings of distance and proximity, new music, new food, new sounds and smells, new buildings, new ways of experiencing the body in space and time, new conceptions of private and public, individuality and collectiveness become increasingly conspicuous. Individuals and groups react to these changes by either semiotic engagement (modifying their semiotic habits) or by semiotic disengagement (contrasting changes so that semiotic habits are not modified). The point of equilibrium that a certain society reaches between semiotic engagement and semiotic disengagement manifests itself also in legal sources.

Legal controversies about the establishment of new mosques in Australia are analysed in order to investigate the nature of this point of equilibrium in the Australian society. The semio-cultural analysis of one of these controversies shows the existence of a gap between the way in which multiculturalism is conceived by the political, legal, administrative, and bureaucratic discourse at the federal and state level, and how it is embodied in local reactions toward difference. Suggestions are made about policies that might help filling such gap. The semiotic engagement of the Australian society is compared with that of the Italian one. The semio-cultural analysis of a recent project of law concerning the establishment of new mosques in Italy shows that the leading socio-political framework in Italy is still relatively monocultural. A vicious circle between the religious majority and its mediatic and political referents shows discriminatory attitudes toward religious minorities. These attitudes might become different if Italy would adopt policies already proved successful in other societies, like the Australian. The latter has a long experience in managing cultural and religious differences.

4 Our Prospects

Both series of contributions presented in this book—those who lead to the foundations of legal semiotics and philosophy as well as those who offer a semiotic analysis of concrete social and communal developments in the modern world, show a surprising multiplicity of perspectives. Whilst offering this prospect, they also operate with a constantly changing concept of law and legal discourse. The book in its totality shows that such changes do not prevent a certain unity in outlining the relevance of legal semiotics. The two components are very different indeed:

changing *law* differs from changing *sign-activities*. Both have, however, the *seme*, the sign as a common property. The future of our system of societies on a global scale is in *plurality*. That is a challenge of hitherto unknown anthropological dimensions. The human mind is in our days a learning mind: learning about its proper capacities, brain functions, life prospects, and its social constructions (Wagner et al. 2005; Wagner 2005b). Kevelson thus highlighted how a semiotics of law should be capable of accounting for inter-systemic communication between systems that are culturally, historically, and ideologically differently located on the map of the globe, and different on the global map of legal systems (Kevelson 1988). It is this plurality, which forms a challenge for our future, is the inspiration of this book when it offers a prospect of semiotics' contribution to legal and social developments.

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