The Semiotic Model of Legal Reasoning

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The scope of this paper is the analysis of semiotic models of legal argumentation and legal discourse. The paper explores how different semiotic models of legal reasoning underscore our appreciation for legal reasoning. The analysis of different models of legal discourse also aims to provide insight into the relationship between rhetoric and semiotics within the holistic semiotic framework of legal reasoning. In order to compare the discursive structures emanating from existing types of rhetorical discourse of law to those created by logical models, it is necessary to develop a sophisticated methodology that mimics and analyzes on a deeper level of coherence in the structure of legal discourse. By examining the assumptions necessary to generate such a methodology, we may clarify the relationships between semiotic, rhetorical and logical images of legal discourse. In order to eliminate discrepancies, we propose the creolization of two distinct metalanguages, that inevitably leads to the reducing of those distinctions and that may have far-reaching consequences for understanding the legal argumentation in all its contextual meaning.

Keywords: legal discourse, legal reasoning, semiotics of reasoning, semiotic model of discourse, rhetoric of law, legal semiotics

1 The diversity of existing models of legal reasoning: from general accounts of argumentation to Morris's model

"Argumentation" is a polysemic word. All the meanings attributed to this word fall into different (more narrow or more universal) categories, which require different conceptual and methodological assumptions

including rules and conversational interaction. The term "argumentation" (or "reasoning") is so thoroughly ambiguous that some attempts (described in van Eemeren (2001)) to define its various meanings have resulted, as we will see later, in contrasting formal and non-formal analyses of argumentation (the prevailing view seems to equate a formal account of argumentation with formal logic, while a non-formal account of argumentation is built on dialectic grounds). However, this is an exaggerated dilemma, since the diversity of situations (in which the necessity for reasoning) arises is very useful for establishing the distinction between different conceptions of argumentation. It is clear that a theory of argumentation will have to be much more elaborate than what goes by that name at the moment. In its most general form, all reasoning, regardless of methods specifically adapted for special kinds of inquiry, is the link between the reality one has thus far perceived and the reality one has semiotically constructed.

Methodologically, the argumentation can be investigated with all manner of approaches, regarding the various functions of argumention in the art of conversation. An outline of these functions demands a concise survey of the constituant components of a comprehensive research program for argumentation scholars. The state of the art in the study of argumentation is itself characterized by the variety of theoretical approaches (van Eemeren, 2001), which differ considerably in conceptualization, scope, and theoretical refinement. **Among the types of research in the field of argumenatation are:** "philosophical studies of the concepts of rationality and reasonableness, theoretical studies in which models of argumentation are developed that are based on such concepts, qualitative as well as quantitative empirical research of various aspects of argumentative reality, analytic studies aimed at a theoretical reconstruction of argumentative discourse and texts, and practical studies of specific kinds of argumentative practices" (van Eemeren, 2001 p.109), since the skill of argument construction is the primary among essential skills of a lawyer.

Some argumentation scholars (with a background in rhetoric and discourse analysis), describe how speakers and writers use argumentation in order to convince or persuade others. In other words, they are engaged in a systematic study of speech act sequences. Völzing (Völzing, 1979) discussed such critical features of actual

arguments as the trust the hearer has for the speaker and basic attitudinal differences between cooperation and competition. Perelman and Olbrechts-Tyteca (Perelman & Olbrechts-Tyteca, 1969) emphasize the world of the audience as critical aspect or argumentation. In the examples from a legislative hearing we will use shortly, the question/answer structure characteristic of institutional discourse introduces problems different from an argument where all speakers have equal rights to the floor (Agar, 1986). This approach implies accord with Jackobson's communicative functions and factors. Other argumentation scholars, often inspired by logic and philosophy, study argumentation for **normative** purposes. For example, we may recall Habermas (1987), who introduced argumentation only as a partial solution in his broader concerns with the conditions that characterize rational discourse. The discourse scholars and rhetoricians are interested in developing criteria that must be satisfied for the argumentation to be reasonable. Although in the study of argumentation both extremes are represented, comparative studies of argumentation (reasoning) tend to take a middle position and focus on general contrasts/similarities between **the normative and the descriptive dimensions of argumentation**. Such comparative studies usually tend to be insightful for the manner in which they seek to reintroduce dialectical relationships between the structures of legal discourse and ordinary, purposeful (justificatory) dialogue.

The interdisciplinary research of argumentation poses certain problems of methodology, regarding the applicability of concepts designed to account for objects with different status. From the standpoint of semiotics, the above problem is reduced to a statement of the differences and similarities between two different (meta)languages (sign-systems). The semiotic analysis of argumentation liberates (at least, partly) the argumentation studies from problelms of transferring concepts from one discipline to another, thus enabling the creolization of two heterogenous metalangauages. Hence, semiotics – which is often designated as a transdisciplinary or even supradisciplinary theory – allows one not only to describe problems of argumentation by referring to the set of semiotic theories, but also to develop disciplinary semiotics of argumentation in a transdisciplinary way. Considering the vast range of established approaches in the study of argumentation, the

disciplinary identity of the semiotics of argumentation will thus depend on a dialogue with other disciplines that deal with various aspects of argumentation (logic, rhetorics, discourse analysis, phiolsophy, linguistics).

In order to illustrate the semiotic potential of argumentation studies, it is possible to conflate this model with the three dimensions of semiotics (Morris, 1938, p.9) such that each theoretical approach in the study of argumentation will be represented as they are reflected within the process of semiosis. Such a rendering of the two heterogenous models requires some explanation. Morris proposed to introduce a distinction between pure semiotics, descriptive semiotics and applied semiotics. While the normative dimension of argumenation is akin to *Morris's pure semiotics*, descriptive dimension is akin to descriptive *semiotics*. Pure semiotics is concerned with the elaboration of a metalanguage in terms of which all sign situations would be discussed, and possible structures and functions of sign systems would be explored. Descriptive semiotics implements this metalanguage to the study of instances of semiosis, and applied semiotics includes the application of semiotics as an instrument (i.e, the aforementioned semiotics of legal argument). There is also another additional layer in pragmatic dimension of legal argumentation, - that of meta-semiotics, which consists of the exchange between and across different legal contexts, and the difference between different modes of legal reasoning, employed by legal "subjects who end up creating "objects", who "leave" their control, and who take on a life of their own within exchange" (Williams, 2005, p.714). Yet, one should always keep in mind that the basic ambiguity of notion "argument" is found in all fields of argumentation and it makes no sense to say that "the semiotics of legal argument is essentially pragmatics, whereas the semiotics of mathematical argument is essentially syntax and semantics" (Horovitz, 1972, p.129). Instead, in order to understand the semiotics of legal argument, one would have to recall Peirce's idea of the continous growth of thought, of semiosis as a dialogical process, which is characterized by inquiry. At the same time, it doesn't make sense to stipulate that the formal semantic validity of the argumentation is a *conditio sine qua non* for material correctness of argumentation; and showing the formal incorrectness of reasoning is a powerful dialectical

or a rhetorical tool. What could appear as a logic deficiency, may become efficiency from the point of view of the practical reasoning (rhetoric), and *vice versa*.

Building one's own methodology upon Morris's semiotic legacy, one must adopt Morris's famous definition of semiotics – that semiotics as a framework is equivalent to the Medieval European trivium of *artes dicendi*, that is, grammar, dialectic (logic) and rhetoric (Morris, 1938, p. 56); for instance, Morris saw rhetoric as an early form of pragmatics. The classic trivium has privileged grammar and logic at the expense of the problematizing effects of the third element. Although semiotic accounts of legal reasoning tend to incorporate Morris's tripartition (pragmatics, semantics and syntactics), some authors have expressed their dissenting opinion in regards of the issue of rhetorics, which is seen as being extended into the domain of pragmatics. Although the analytic part of 'legal rhetoric' has traditionally been confined to the pragmatic dimension of semiosis in law, the scope of which has been extended in many ways to deal with the questions of law in adjudication. For example, Ballweg expressed his own view of the relationships between semiotics and rhetorics is true: semiotics is a restricted part of rhetoric (Ballweg, 2009, p.122) and as we can see, this view is the opposite to Morrs' view. It is also common among legal scholars to consider the rhetorical element as the destabilizing and subversive element in discourse, that undoes the claims of the trivium to be an epistemologically stable construct (de Man, 1986, p.17). Drawing on the ideas of Saussure and Nietzsche, de Man points out that the rhetorical and tropological dimension of language makes it an unreliable medium for the communication of truths, because literary language is predominantly rhetorical and figurative. Therefore, to take for granted that literature is a reliable source of information about anything but itself would be a great mistake.

We might be tempted then, to keep a single set of terms for both the general accounts of argumentation, the logical ones and the rhetorical ones as well. We would arrange these in a system useful for both kinds of analysis, general account of argumentation and semiotic. Then, the epistemic amount of terminology we require would be reduced. Such a procedure of simplification would have a number of disadvantages, however. Most important is that, for the sake of the

simplicity of a system such as the one we are going to develop, we must sacrifice some of the important distinctions between different theories of argumentation. Despite its power and sophistication as an analytical and critical tool, the simplicistic semiotic methodology developed here cannot completely eliminate any of the terminological discrepancies between the logical account of legal reasoning and the rhetorical ones. Those who study argumentation are constantly generating names for and distinctions among the elements of discourse or the forms of argument. To compare the discursive structures emanating from existing types of rhetorical discourse of law to those created by logical models, it is necessary to develop a sophisticated methodology that mimics and reflects a deeper level of coherence and contradiction in the structure of legal discourse. By examining the assumptions necessary to generate such methodology, we may clarify the relationships between semiotic, rhetorical and logical images of legal discourses. Instead of the elimination of discrepancies, we propose the 'creolization' (the synthesis) of two distinct metalanguages, that inevitably leads to the reducing of those distinctions and that may have far-reaching consequences for understanding of legal argumentation in all its contextual peculiarities.

2 Comparison between structuralist and post-positivist models of legal discourse

It is widely accepted that the relationships between semiotics, rhetorics and logic are marked by close association: and in all those fields one can mention the explicit preclusion of single theory of argumentation, - the phenomenon that contributes to the heterogeneity of methodology, as well as to the inherent diversity of argumentation theories. The broader field of discoursive study of argumentative practices is the site of intersection between two currents (logic and rhetorics), not usually called semiotics, but in practice implicitly or explicitly drawing on semiotic theories to such extent that some scholars (Toulmin, 1958) see argumentation as a prototypical example of *rational* discourse, which can be expanded into the domain of normative discourse. Toulmin’s layout of practical argument can be used both to critique and to generate legal arguments This layout is based on a metaphor of

movement along a path - “an argument is *movement* from accepted *data*, through a *warrant*, to a *claim*” (Berger, 2009). Toulmin set as his goal the development of a theory that better approximates everyday argumentation than traditional models of logic. In its schematic form, his theory may be presented as follows: certain data lead to a conclusion. The relationship between data and conclusion are supported by a warrant (A) that, in turn, has a backing (B). The relationship between data and conclusion may be qualified, since under certain conditions a rebuttal may be possible that invalidates the relationship between data and conclusion. The structural correspondence between the axiological hierarchy of values, expressed in the formal language of logic, and the normative hierarchy of normative concepts, lends support to Toulmin’s conclusion that logic is nothing but a generalized form of jurisprudence (Toulmin, 1958, p.6). As to Toulmin’s conclusion, Roberta Kevelson (who was a leading figure in Peircean semiotics of law), invoked him, when she summarized the particular type of logical theory of law that she theorized in her papers (Kevelson, 1980) and whose semiotics she expounds in the title “the semiotics of legal argument”. From epistemological perspectives of legal discourse, this particular type of a discourse is dominated by normative concepts. Examples of these normative concepts are found in “most general legal ideas, such as the notion of right, a permission, and an obligation“ (von Wright, 1968, p.11). Traditionally, legal discourses, especially used in the legislative context, are considered notorious for their complex semantics and rigorous syntax, which is explained by the fact that until recently the law was not considered as communication.

The position of legal discourse is thus dependent on the ability of its participants to reconceptualize legal activity - law-making and law-finding, - which has intentionally been directed at intertextuality (Kristeva, 1967), especially in case of the collision between international legal order and national jurisdictions. This is the occasion of symbolic struggle (Bourdieu,1987; Voloshinov, 1973), which is characterized by the co-existence of several distinct linguistic sign-systems of discourses (legal, oppositional, scientific), each of which can be conceived of as a *habitus*. Various rhetorical dimensions of various discourses (world-views) compete for dominance, but this symbolic struggle is pre-eminent in the legal sphere, in which a legal

text sets itself into an intertextuality, as a interdiscourse between discourses (texts, etc.) whether in the in a more metaphorical sense; the text being considered as a place of complex interactions between different texts which give precedence of one over others. It is commonly known that in legal practice, the hierarchy of texts is defined through a general priority mechanism of *lex specialis, lex posterior, lex superior*. The legal habitus can be metaphorically describes as the force of law or the constituve effect of the law (Derrida, 1992) which operates like fundamental categories of juridical perception that structure a group of foundational concepts and principles of law (Bourdieu, 1987, p.832). For example, in tort law (which has certain distinctive rules), the juridical field is organized around the basic concepts of fault, intent, or causation, and more recently, the notions of cost-benefit analysis and economic efficiency- juridical scope of tort law is to be defined such that all these concepts included. Public norms of tort law prescribe "absolute duties" not owed to anyone in particular: therefore some of the concepts (like the concept of culpability from the dominant voculabry of moral theories in tort law) are simply irrelevant being replaced by the objective standards of due care as well as by standards of negligence and strict liablity. Hence, most of modern theories of tort are aligned to the abstract principle of corrective justice, that puts in order and relationships of dependency the concepts of wrong, loss, responsibility and repair. The notion of responsibility on which determinations of tort liability depend, is strictly a political notion (Postema, 2001) or, in othe words, this notion depens for its content on legal habitus (tort practice). The significance of habitus to legal theory is difficult to underestimate, for it makes possible a more inclusive depiction of the legal discourse by incorporating the elements of deconstructive practice into the context of semiotics. These elements will include the deep structure (not to be confused with the deep structure in Chomsky's theory, in our case the deep structure is a pre-semiotic sphere of psychological drives, which in our example would be "intent"), the discursive structure (defined by the postions of utterances within the paradigm and syntagm semiotic axis, i.e., defined by categories of "fault" and "causation"), the referential structure (dictated by the metonymic and metaphoric semiotic axis) and extra-verbal context (the pragmatic elements, like "economic efficiency")

(Milovanovic, 1992, p.104-105). From the general perspective, it is possible to group the semiotic accounts of legal discourses according to the object of their preoccuption. For example, the semiotic accounts of law inspired by Greimasian structuralism (rooted in logic and grammar) are concerned with the referential structure of discourse (it holds that the meaning has its own reference rooted in logic and grammar). Those semiotic accounts of law, drawing inspiration from Peircean semiotics, are usually associated with the pragmatic elements which subsume the dialogical nature of legal discourse. Other accounts of laws, drawing inspiration from Lacan's psychoanalytic semiotics, the integration of Freudo-Marxism with Nietzscheanism (developped by Deleuze and Guattari) and/or French postmodernits feminists are focused on the deep-structure of legal discourse.

It is important to emphasize here that the term “discourse” in the previous passage is considered nearly synonymous with the terms “*message”*, *“dialogue”* and *“argument”*. It is that type of a unified coherent discourse, which “is held together by a ruling theme, by a non-ambiguous system of cross-reference, and by certain implications, or presuppositions, which permits deleted verbal phenomena to be recovered in so-called 'deep structure analysis'” (Kevelson, 1980, p.54). According to Kevelson, “dialogue” or “discourse” is defined upon a certain type of underlying communicative structure, which Kevelson, following Jan Mukařovský, labelled as “a dialogical structure” (Mukařovský, 1970).

Thus, Roberta Kevelson, introduced into semiotics of legal arguments a new appraisal of the reciprocal relationships between logic (formal argument) and dialectic (non-formal argument), which lends support to a very specific explanation of “a coherent discourse” in terms that correspond to the function of theme and rheme in the Prague School’s theory of the principles of functional sentence, whereby the theme of a sentence is meant that part that refers to what is already known, and by the rheme is meant that part, what is asserted about the theme (Mathesius, 1929).

To make that explanation more explicit, we would have to refer to another, more traditional “structuralist” definition of discourse. According to this definition, a discourse is considered a unified, coherent system of sequential sentences beyond the level of a single

sentence, organized along the syntagamatic and paradigmatic axes of language. As we may learn from the writings of legal post-positivists, the criteria of coherence, used in post-positivist theories of law, are merely syntactic, because the concept of "coherence" itself is traditionally expressed in the following way (even the word "theory" itself is used here in a strict sense similar to "discourse"): "the more the statements, belonging to a given theory, approximate a perfect supportive structure, the more coherent is theory" (Peczenik, 1989, p.161). This type of "syntactic" **coherence** is considered one of six underlying preconditions for **"rational practical discourse"** (Alexy, 1989, p.188): that is a concept which is trickier than it seems, for it transports us into the much contested terrain of discursive rationality, which is, according to Habermas (1996), simply one component of reason. Habermas' dialogic conception of the ideal, discursively rational, speech act is marked by strong idealisation, regarding everything as irrational so long as it is not completely discursively vindicated. While the principle of dialogue can be treated as the foundation of "rational discourse", Habermas' potentially fallible conception of "ideal speech situation" fails to take sufficient account of the rules of the discourse and its starting points – the normative and semantic investments (which are symptomatic of the terms of an ideological system) of those persons, participating in the discourse (Pintore 2000:188).

The possibilities of the communicative situation, free of coercion is present in any speech act. However, there is as large a gulf between understanding a speech act and agreeing with its semantic and pragamatic force. Moreover, another potential fallacy of Habermas' model of "discourse" is that it follows traditional practice in associating truth-functionality with *ideational* sentence truth-meaning and communicative competence (Habermas, 1979), which is viewed as a "universal pragmatics of making universal claims of validity" (Jackson, 1996, p.91). Even if post-positivist theories of law generally ought to accept that a lie can constitute a rational action, it is believed that in a perfectly rational discourse a lie is no correct reason. It is on this basis that legal postpositivism asserts the main discursive paradox: **a discourse full of lies is not perfect as a discourse** (Alexy, 1989; Peczenik, 1989, p.191) , i.e a discourse full of lies is equivalent to an

invalid discourse. It is also important to mention that Habermas took a radical stand against Peirce's logic of inquiry, criticizing it for precisely that which it is not (Habermas, 1971[1968]). Habermas insists that a reliable theory of human knowledge must be constructed so that it resembles the dialogic structure of social exchange and this dialogic structure alone is a sign of authentic communication. In fact, this is precisely what was claimed by Peirce when he spoke of dialogic communication (CP 6.109). But Habermas, for obvious reasons, resists the contamination of rational argument by formal and rhetorical factors. He attempts to maintain a clear and rigorous distinction between philosophy and other forms of writing, particularly literature and literary criticism; he rejects the postmodern assault on reason on the grounds that it occupies the no-man's-land between argumentation, narration and fiction.

By comparison with post-positivist legal theories, Prague School has revealed the structural markers of the functional styles, and therefore this school has paid much more attention to the stylistic and aesthetic, rather than syntactic, criteria in analyses of discourse. The stylistic analyses of discourses, which constitute the object of a semiotics of conversational activity (Eco, 1976, p.278), are dominated by the discussion of rhetoric figures (tropes and schemes) and stylistic features, realized in the surface of the discourse as deviations from the coded norm or *zero degree level of language* (Dubois, 1970). In line with his cautions regarding the theory of unlimited semiosis, Eco asserts the primacy of a "common-sense" reading based on a text's literal meaning: "the interpreter must first of all take for granted a zero-degree meaning" (Eco, 1991, p.36). A respect for this level of literal meaning, plus a belief in the principle of 'internal textual coherence', the belief that any portion of a text can be used to conform or reject an interpretation of any other portion, can guide the interpreter along the straight and narrow path in the realm of understanding into the *dialogic* direction of the interpretive act: from the author's intention through the text's intention to the intention of the reader. Each of those 'intentions' is the actual interpretation of any kind of text. On other hand, the significance of stylistic analysis in discourse which is considered essentially dialogic in structure is central to Vološinov's concept of dialogue. As was shown by structuralists, the aesthetic structure of

discourse arises out of a violation of norms (Mukařovský, 1970). Structuralism is scientific not so much in the degree of precision which it hopes to achieve as in the level of generality on which it operates. Rather than, for example, interpreting an individual literary text, the structuralist seeks to establish the general laws of which this text is the product. Structuralism can be defined in part by reference to its interest in sign systems and signifying processes derived from Saussurean linguistics. That is the reason why a structuralist approach to the analysis of discourse is characterized by a great *interest in* certain "structuration marks"- textual features and parts of speech - which otherwise (in ordinary language) are not meaningful: substitution, ellipsis, repetition, structural relationships between lexemes and morphemes ("operators" or "connectors"). Certain "structuration marks" (such as connectors *"besides"*, *"notably"*, *"only"*, *"no less than"*, *"but"*, *"even"*, *"still"*, *"because"*, *"and"*, *"so"*, *"that is to say*", etc.,) give the linguistic utterances a specific "argumentative force" and determine "argumentative direction" of the conclusion that is suggested by the whole sentence and not the content of this conclusion (Anscombre & Ducrot 1983). The normal concerns of an inter-disciplinary study of legal practices usually involve matter which either are of a clearly semiotics nature (such as syntax, semantics and pragmatics of legal discourses) or are more closely applied to actual legal situatations. By evoking representation of the discourse situation, different discursive registers of legal practice display an extensive use of typical intertextual and interdiscursive devices which by their design often create specific problems in their construction, interpretation and use, especially when placed in interdisciplinary context. These intertextual (interdiscursive) devices are intended to induce certain discourse situation/ behaviour, performing 4 major pragmatic function of (1) signaling a link between different level of intertextual authority; (2) providing terminological explanation; (3) facilitating textual mapping; and (4) defining legal scope. Of the mentioned functions, the first function of signaling is most comprehensive from semiotic point of view. Textual authority is usually signaled in the form of a typical use of complex prepositional phrases, which may appear to be almost *formulaic* to a large extent. We may try to emulate the formalist approach to legal text by breaking down intertextual patterns in legal

normative texts of the same structure into their smallest narrative units, we are able to arrive at a typical sequence of inter textual connectors "…in accordance with/ in pursuance of/ by virtue of+(the provisions of) +subsection/chapter/section/paragraph...+ of the ..... Act/of the schedule/of ..... instrument" (Bhatia, 1993). Consider the following example of normative statement from Law of Obligations Act of Republic Estonia § 15. **Party's awareness of deficiencies of contract** *(3):*

> *Compensation for damage pursuant **to the provisions of subsection (2) of this section** shall not be demanded if the other party was also aware or should **have been aware of circumstances** rendering the contract void or if the contract was rendered void due to the party's restricted active legal capacity or the unconformity of the contract with good morals.*

The use of the complex prepositional phrase "*pursuant to the provisions of subsection*" fulfills here the technical obligation to indicate how quoted legal provision positions itself and draws on other texts (in the indicated subsections). On other hand, this phrase explicitly signals an inter-textual link to another subsection that expresses certain restriction of rights, imposed on the other party of contract. The subsequent part of the cited legal provision draws on prior texts as a source of meanings to be used at face value. This occurs whenever one text takes statements from another source as authoritative and then repeats that authoritative information or statement for the purposes of the new text. For example, in a U.S. Supreme Court decision, passages from the U.S. Constitution can be cited and taken as authoritative givens, even though the application to the case at hand may be argued.

Since every "dialogue" (or more generally, conversation) is strongly marked by the aesthetic function, aesthetic *dialogue* is the superordinate type of all possible types of *discourse* within a particular dialogical or discursive system (Kevelson, 1977b, pp.281-282). If we turn then to the aforementioned Alexy's discursive paradox, which now will be reformulated in terms of norms and violation of norms, we may claim that in spite of deviation from the basic rules of normative

sincerity, a *discourse full of lies* still constitutes a valid discourse from an aesthetic perspective. A number of theorists have specified the co-existence of diverse discourse or bounded discursive subject-positions (Foucault, 1972[1969], pp.107-108) and what is suggested is that Symbolic Order is not a monolithic system. Each particular type of legal discourse is very much dependent on the context in which it is eventually applied, the pragmatic context is treated as the fulcrum in generalizing properties of discourse, -for instance, the context of lies in a particular legal discourse of veridiction (a truth verifying procedure). In terms of speech act (i.e.) pragmatic theories, lies as speech acts are considered being induced by the abuse of communicative act, resulting in various constellations of speech acts: misrepresentations, misinterpretations, self-deceptions and temporary infatuations (Searle, 1999).

In regular cases, at an oral hearing, the participants are obliged to answer the questions and the legal competence or capacity of witnesses to testify is determined by an understanding of the obligation to tell the truth (in modern legal systems of proof witnesses must swear or solemnly affirm that he or she will testify truthfully). A faithful *witness* will not *lie*; but a false *witness* uttereth *lies* - if the witness intentionally lies about material matters (i.e. about matters which affect the outcome of the case), perjury or forswearing charges may be filed against him or her. In reality, intentional and non-intentional lies often dominate legal discourse, especially witness testimony, where lies are especially dangerous. Some specific cases of lies are even permitted: for instance, the police do not have to tell the suspect of all crimes being investigated. Needless to say that skillful lawyers usually have no problems constructing *deliberately misleading* arguments that contain non-existent references to legal provisions or precedents which allegedly support constructed arguments. Here we can formulate a substantial difference between semiotic and pragmatic approaches: in the vast range of semiotic approaches, a sign is everything which can be taken as substituting for “something else”, and this “something” does not necessarily have to exist in objective reality.

To put it in Umberto Eco’s words – “semiotics is in principle discipline studying everything which can be used to lie“ (Eco, 1976, p.7). And, on the contrary, pragmatists are not interested in lies,

because the limits of speech act theories are defined by the preconditioned requirements (sincerity, trust, symmetry of communcation, etc.). We will probably have already seen the same approach, applied to Habermas's idealistic model of discourse, hence, pragmatists and Habermas are agnostic about the existence of more very complex and multifaceted discursive illusions, meanwhile in real legal disourse, democracy and human rights are some of the most appropriate concepts that are prone to different conceptualizations of reality, and hence discursive illusions (Bhatia & Bhatia, 2011).

Another limitation faced by Habermas' model of discourse is that the representation of so called half-truths, which are encountered in legal discourse as a result of the violation of discursive rules. In legal practice, half-truths emerge in a situation where there is a discrepancy between the requirements for a complete testimony and a lawyer's strategy. But this serious limitation of Habermas' model has profound theoretical implications as well. First of all, from the perspective of classical legal rhetoric, the half-truths are expressed by litotes - figures of speech consisting of an understatement in which an affirmative is expressed by negating its opposite. As we'll see later, this specific rhetorical tactic could lead to a problematic situation in the axiological system of reasoning, when interpretation is being heavily loaded by an overworked but defining semiotic zero-sign. A zero-sign may be conceived as if its sign-vehicle is signified merely by its very absence, occuring in a zero form (Sebeok, 1976). Thus it signifies the apparent contradiction between used terms, presenting opposing frames of reference in conflict. The problem of zero-sign is definately related to that one of *minus-device* (Lotman, 1972, pp.82-83), which is defined as a significant absence of a semiotic device. In this respect, Lotman refered to Roland Barthes's "writing degree zero" (Barthes, 1967[1953]), although the similiar idea was expressed and generalized in Šklovskij's, Bally 's and Jakobson's works (Šklovskij, 1990 [1925]; Bally, 1965 [1932]; Jakobson, 1939) in which "zero-sign" marks a significant interval in a message continuum and also indicates a shift from syntagm to paradigm.

Whichever of these two discursive approaches we are inclined to follow in our analysis of argumentation, they pose a serious dilemma for semioticians who study argumentation - the dilemma of selecting

minimal elements for apprehending and producing signification from a vast purposive complex of discourse. Despite methodological and thematic differences in the methods of inquiry, there is a verisimilitude such that a structuralist method of inquiry may be mapped onto methods of inquiry in legal post-positivist philosophy. Here we see semiotics as a more general method of inquiry capable of providing necessary bridge rules to bring two methods of inquiry into a relational unity.

3 Underlying rhetorical model of legal discourse

It is evident that this relational unity of methods is dependent on a rhetorical model. In order to obtain an appropriate representation of this rhetorical model, we will take as a guide Roberta Kevelson's elaboration on Peircean division of logic (Kevelson, 1990; Kevelson, 1992; Kevelson, 1998), according to which it is Peirce's *Speculative Rhetoric* which provides "bridge rules" transition from semantic function of logical terms to the pragmatic dimension of language. This transition is "the chief instrument for expanding traditional logic into semiotic logic, by understanding the concept of Property as a device of Rhetoric, i.e., of Semiotic Methodology… law becomes prototypical of semiotics, in process, practice and theory, by means of a more complex and continually evolving concept of Property" (Kevelson, 1992, p.189; the same idea expressed in Kevelson (1990, p.117)). "Property in Law" is **a rhetorical and semiotic instrument for** the creating of meaning in law and in society, **whose purpose is to bring together two or more universes of inquiry (i.e dialogues) or semiotic sign-systems into relationship**, or into ever more general comprehensiveness and meaning. For each sign of law, there is a corresponding determined operation of social systems, which is the foundation of the sign itself: the regulations constituting law have their origin in the practical requirements of the social structure (Carzo & Morabito 1988). This idea of bridging different sign-systems in itself is not by any means, original – the analogous theses have been widely shared among the theorists representing various semiotic schools and approaches. For instance, the similar theses may be seen as being endorsed by theses of cultural semiotics, where cultural semiotics is defined as a study of the

functional correlation of different sign-systems (Lotman, 1975). The same idea expressed by Lotman in his writings on Jakobson's structural rhetorics, where he argued that the sphere of rhetorics cannot come into being on the basis of only one language, - rhetoric phenomena emerge when at least two semiotically heterogenous languages collide (Lotman, 2009). Therefore, semiotics seek to create new value in junctures established by two different sign-systems, such as the system of law or the economic system by bringing together two or more unrelated systems into more comprehensive complex sign-systems.

Nevertheless, Kevelson's contention that law is prototypical of semiotics by means of a rhetorical device of *Property*, has important implications for both legal semiotics and critical legal studies. Every time we bring together two methods of reasoning in the mind, we are acquisitors of new property of reasoning, which can be described as *syllogistic* recollection (Kevelson, 1987, p.33), since recollection bears a likeness to a sort of syllogism. This analogy suggests that the grasp of new truths may be compared to the acquisition of new possessions. In particular, the concept of *Law as Property* has received a significant reception in post-colonial and feminist studies of law, where the concept of property (which is seen as being inseparable from power over people as objects), like law itself, is used as a semiotic device for creating the artificially imposed exclusions on what is and is not law (Threadgold 1999): the distinction between property rights and human rights is spurious, as human rights (based on the notion of individual freedom) are simply corollary to people's property rights. However the actual law of property includes the limitations that the public author imposed on property rights, by bringing together a legal institution of property to the rhetoric developed around that legal institution and creating a highly technical level of lawyer's discourse, which remains inaccessible to laymen (Mattei, 2000). As has been exemplified by Kevelson and her followers, the concept of property is very useful for examining legal concepts of property, trusts, successions and contractual relations in law (Kevelson, 1990, p.8).

Consider the following example from EHRC practice - *James v United Kingdom* (1986) 8 EHRR 123, where the applicants claimed that the compulsory transfer of their *property* under the Leasehold Reform Act 1967, as amended, gave rise to a violation of Article 1 of

Protocol No. 1 (P1-1) to the Convention, which reads: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the private use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties". In this context, legal rights of property over assets (that consists of the rights to consume, to obtain income from, and alienate those assets) are seen here as the rhetorical enhancement of economic right, which is closely related to the concept of transaction costs, associated with the transfer, capture and protection of rights (Barzel 1989:2)

The Court considered that Article 1 (P1-1) in substance guarantees the right of property. In its judgment of 23 September 1982 in the case of *Sporrong and Lonnroth*, the Court analysed Article 1 (P1-1) as comprising "three distinct rules": the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest (Series A no. 52, p. 24, para. 61). The Court further observed that, before inquiring whether the first general rule has been complied with, it must determine whether the last two are applicable (ibid.). *The three rules are not, however, "distinct" in the sense of being unconnected*. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule.

4 The functional correlation of structuralist and post-positivist conceptions of legal discourse

In order to accommodate a sufficient explanation of transition from semantic and syntactic features of structuralist and post-positivist conceptions to the unified semiotic theory of "discourse", we must place these theories within the larger context and look more specifically at the mutual functional correlation of structuralist (A) and post-positivist (B) theories of discourse. To give a very strict definition of the term "dialogue" (A) (in the sense it was commonly used in the Prague School, which is almost interchangeable with "discourse"), we can recall Mukařovský's studies of dialogue (Mukařovský, 1977), aimed at furnishing of a comprehensive, albeit arbitrary, approach to "dialogue". What defined dialogue for Mukařovský was triadic relationship: the first is the relationship between two dialogical participants; the second is the relationship between two dialogical participants and the material situation "theme"; and, finally, "semantic structure" of dialogue, provided by the unity of "theme", or "thematisation" of semantics on discursive level (Mukařovský, 1977, pp.86-87). At the same time, the post-positivist (B) model of discourse in its purest (Habermasian) form can be also reformulated in terms of triadic relations: the relation between the participants in the communicative *ideal* situation; the relation between the participants and the *ideal speech situation*; the explicit procedural rules, which are meant to guarantee consensus.

What is isomorphic to the discussed models (A and B), is that in both cases the discourse has an inherent meaningful structure, which is related to the dialogical structure of conversation shaped by the relations of a specific logic. Kevelson's investigations of the particular category of legal speech acts (decisions), show that this is based on a specific logic of questions and answers - erotetic logic, while the other categories of legal speech acts are based on a deontic logic, and that both types of logic presuppose a dialogic or relational structure (Kevelson, 1998, p.69). It was also Roberta Kevelson, who made an important step towards the unified semiotic theory of erotetic discourse by contending that any given discourse is an answer to a deleted, entailed, implied or presupposed question (or enthymeme, which we

will discuss later) (Kevelson, 1977b; Kevelson 1978). Later, she laid out several of the starting points for transferring methodological property of "discourse" into the dynamic space of semiosis, that is in the sense of interaction between replica of discourse and its representament (type) (Kevelson, 1985). Two partical kinds (tokens) of discourse, which are instantiated by interrogative structure (type of discourse) - legal decisions, and riddles in literature - are said to be prototypical in regards to the process of discovery that is the process of dynamically interpreting known signs into new meaningful signs (Kevelson, 1985). In Kevelsonian semiotics of law, the interrogative structure of a legal discourse (or a legal speech act) is envisioned as expressing an anaphoric reference of the interrogative index sign to the deleted subject of proposition. A careful examination of Kevelson's idea reveals a certain analogy between the process of dynamical interpretation of signs (i.e semiosis) and Peircean conception of hypothetical reasoning, though not necessarily in the sense initially ascribed to it. According to Peirce, hypothetical reasoning is dependent upon perceptual judgments, containing general elements such that *universal propositions may be deduced from them*[1].

In other words, the concept of theme stands for "old" (deleted, entailed, implied or presupposed) information, while the concept of rheme implies the emergence of new information. It is clear that Kevelson considerably attenuates the scope of distinctions between the terms rheme and theme by showing (borrowing Peirce's definition of "rheme" in "A Syllabus of Certain Topics of Logic", EP 2:299, 1903) that a rheme is the blank form of proposition which was first produced by the erasures and if these blanks are of such a nature that if each of them be filled by a proper name the result will be a proposition (Kevelson, 1992). The approach to legal speech acts, developed by Kevelson through Peircean semiotics, tends to equate the pragmatic approach with erotetic discourse. Such erotetic discourse seems to be worth reconsideration in a form more pertinent to legal reasoning, especially in Common Law discourse. What is considered fruitful in this type of legal discourse in Common Law, is that Common Law discourse recognizes the creative role of legal interpretation, where

[1] Peircean conception of perceptual judgements is discussed in (Sebeok & Sebeok-Umiker, 1979).

rules and canons of legal reasoning serve as tools of trade "for the professionals who can choose among them, and may sometimes manipulate the text by using them" (Jemelianek, 2002, p.327). The creative role of judges in manipulating the legal dispositions by means of legal argumentation is - at least on formal level, - indicative of certain semiotic isomorphism between elements of legal discourse (legal norm) and aesthetic dialogue (aesthetic value). If we are able to establish such relations between law and aesthetic value, then it is possible to inject "the legal concept with an aesthetic sense, a symbolism inspired by Kant's thesis that beauty is the symbol of morality" (Kaldis 2003:239). The similar viewpoint was already known to ancient Roman jurists of high Classical epoch and was epitomized by Publius Iuventius Celsus's (2nd. ct. AD) dictum *"Ius est ars boni et aequi" – "Law is the art of the good and the equitable"* (Dig. 1, 1, 1). Common Law's principles of equity, which mitigate the rigor of the Common Law discourse, also include in their purview the conduct that springs from exceptional goodness.

The study of **two different sign systems – rhetorics and jurisprudence – in their mutual correlation** has solid methodological underpininnigs. From historical perspectives, the legal science – jurisprudence - has intimate and profound connections to the rhetorics. The earliest magical form of Roman law (jus) was rhetorical in a variety of related senses, as it was drawing heavily on the rhetorical language, inducing by symbolic or figurative means the impenetrability of legal language. The secularization of ancient Roman law led to the separation of *ars rhetorica* from *juris prudentia*, resulting in the establishments of two separate disciplines. ***Rhetorics as an art of speech*** grew out of the practical needs of democratic institutions - court and political speeches became the most important rhetorical genres. ***Rhetorics as a discipline***, in which the objects of formal study are the conventions of discourse and argument, has its roots in the classical world of the pre-Socratics, Aristotle, Cicero**.** Already by the 5th century BC there had emerged an intuitive notion of truth that could be termed the rhetorical ideal**.** According to this ideal, thinking, speaking and acting form an inseparable complex: it is possible for a human being to develop and formulate one's thoughts and ideas properly (the sphere of

logic), to express them properly (rhetorics) and, in accordance with these, to act properly (justice) (Lotman, 2009, p.3).

As an independent discipline, rhetorics had to define and position itself in relation to other branches of learning. Rhetorics opposed poetics as a skill of verbalizing real events against the skill of verbalizing fictional events; rhetorics opposed *dialectics* as an art of monological speech against the art of dialogue; rhetorics opposed logic as an art of expressing one's thoughts against the art of thinking, According to Aristotle, rhetorics is something like applied logic; logic is the art of proving, in rhetorics instead of strict logical evidence there are *soriteses* consisting *of enthymemata* (Lotman, 2009, p.3). Enthymeme is a term known from classical rhetoric which describes an argument that does not make explicit either the major or minor premise or the conclusion (enthymeme, being the core of persuasive speech, is also called a rhetorical syllogism). The topic of *enthymemata* was skilfully presented from a semiotic perspective in Kevelson's explanation of Peirce's claim, according to which all arguments are being based on unexpressed presuppositions (Kevelson, 1988b, p.5). Tacit, or unexpressed presuppositions, are held to be typical and characteristic to the judicial discursive structure, because not all the used legal norms are revealed, many of them staying not only out of question but also hidden. The presence of imperfect syllogism (*enthymeme*) is usually marked by specific *topoi*: "the employment of oppositions and equivalences of terms (antonyms and synonyms), the comparison, differences in degree, previous experiences, polysemy, ambiguities, generalizing judgments of value" (Adeodato, 1999, p.142). What seems to be the case of legal practical reasoning is that rhetorical syllogisms (*enthymemata*) connect statements, which are substantially based on only probable imputations expressed in the topoi (Kratochwil, 1991, p.218). This specific feature of practical reasoning in legal discourse is best explained by pointing to a set of oppositions, which distinguished practical legal reasoning from closed and highly formalized systems of logical reasoning. As we show in subsequent section, irreconcilable oppositions between formal logic and legal reasoning are motivated by both historical tradition and some methodological contentions.

5 Conclusion

The most obvious sequitur of our discussion is that **legal reasoning as such is topical, rather than logical**. Although rhetorics was originally a discipline to define the semiotic links between language and power by semiotic devices of enthymemeta, ituntil recently the dominant tendency within jurisprudence has been that of the formalism, and the discipline of rhetorics has remained loosely connected to jurisprudence. With the preponderance to the logical rigorism, jurisprudence seemed to privilege syllogism and viewed enthymeme as a lesser form of argument, which was meant only to be used in speech acts of persuasion in absence of clear logical syllogistic certainity. The crisis of rhetorics lasted until the middle of the 20th century, when structural linguistics rediscovered anti-formalist concepts of practical reasoning. This made it possible to be considerably more specific than the ancient rhetorical teaching of tropes as figures of thought, and more specific than the ancient rhetorical teaching used for the *discovery of arguments* (*inventio*) from the various sources of information (*topoi*). In Aristotelian rhetorics, topoi are general instructions saying that a conclusion of a certain form can be derived (or discovered) from premises of a certain form. In 1965, Theodor Viehweg (Viehweg, 1965) offered a topical account of legal reasoning and convincingly demonstrated that the mechanism of legal argumentation is designed to solve whatever material/formal problems of law by referring to an open, undetermined and ever expanding list of *topoi*. At the same time, the work of the Brussels school (founded by Chaim Perelman), established the contemporary disciplinary meaning of the term rhetoric (New Rhetoric), as that of the discipline which studies the linguistic form of *discourse a*nd more particularly the word-based figures of literary and poetic genres, primarily those of metaphor and metonymy (Goodrich, 1984a). The use of a metaphor may be preceded by discussion of the subsidiary subject, which has the effect of controlling the associations carried over in the metaphor, the text becomes not just a sentence, but a syntagmatically constructed set of paradigmatically defined elements. Excelent analysis of rhetorical devices employed in

legal practice (*R.A.V. v. City of St. Paul, Minnesota*)[2], may be found in M. Facchini and P.Grossmann's article (Facchini & Grossmann, 1999), where the authors sought to reveal rhetorical figures in USA Supreme Court's majority opinion, which was concluded by writing: "*Let there be no mistake about our belief that burning a cross in someone's front yard is reprehensible. But St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire*". As authors explained:

The Court metaphorically reduces cross burning to the burning of the First Amendment. The court expresses the unconstitutionality of the ordinance by saying that allowing the law to stand would be essentially equivalent to burning the First Amendment. The Court here first metonymically reduces cross burning to First Amendment rights, and then metonymically shifts the meaning to the burning of the First Amendment. (Facchini & Grossmann, 1999, p.219)

Secondly, we can recall another important methodological contention that legal reasoning is *dialectical rather than analytical*, since legal reasoning operates by means of dialectical persuasion, convincing the audience through discourse to accept legal arguments (which otherwise would be unfeasible). As for rhetorical conceptions. In "Logique Juridique" (Perelman, 1976), Perelman described the generally accepted starting points of an argumentation: facts, truths, presumptions, values, hierarchies, and the loci-topoi, which are necessary for convincing an audience of the acceptability of a legal decision, i.e. audience-accepted commonplaces, which are encapsulated into the structure of schemes for making inferences. Among the most popular typology schemes in legal reasoning are *argumentum e contrario* and *analogy*.

It is worth mentioning that Perelman made explicit the special role of enthymeme in practical reasoning: not all premises of those arguments are made explicit, since explicit assumptions gain their meaning only in the context of the presuppositions (Perelman, 1977).

[2] R. A. V. v. City of St. Paul, 505 U.S. 377 (1992) was a United States Supreme Court case involving hate speech and the free speech clause of the First Amendment to the Constitution of the United States. An unanimous Court struck down St. Paul, Minnesota's Bias-Motivated Crime Ordinance, and in doing *so overturned the conviction of a teenager,* referred to in court documents only as R.A.V., for burning a cross on the lawn of an African American family.

Of special importance in New Rhetoric is that the practical reasoning has grown out of the value hierarchies, practices and norms mutually accepted by interlocutors who participate in argumentation. In contrast to the closed system of inference in logic, the inference to the rhetorically best explanation in practical reasoning is made possible rhetorically. However one should always keep in mind that the notion of legal rhetorics is hardly defineable. For instance, CLS (Crtitical Legal Studies) scholar, Gerald B. Wetlaufer, identifies the *rhetoric of law* in terms of a linked set of rhetorical commitments to different discursive levels, i.e rhetorical commitments "to toughmindedness and rigor, to relevance and orderliness in *discourse*, to objectivity, to clarity and logic, to binary judgment, to the closure of controversies; to hierarchy and authority, to the impersonal voice, and to the one right (or best) answer to questions and the one true (or best) meaning of texts" (Wetflaufer, 1990, p.1552). Thus, rhetorical commitments are describable as indicants of the real values of the authors of any particular legal discourse; these commitments deemed to exist as subversive precondition of the formalist legal argument which such discourse purports to convey as a message within the system of legal communication. Here, we could confirm the existence of the deeper affinities between CLS's conception of "central contradictions" and Hjemslev's semiotic model that suggests that both expression and content have substance and form (Hjemslev, 1961, p.49). In Critical Legal Studies movement, the form and the substance of law are regarded as being related and opposed rhetorical modes, tied to contradictory substantive commitments to individualism (individual autonomy) and altruism (communal force), reflecting a deeper level of contradiction in the western legal order and providing additional evidence of the legal system's indeterminacy and incoherence (Kennedy, 1979, pp.211-213). The CLS scholars have identified several fundamental contradictions embedded in the structure of western discourse of law: the public versus the private spheres; subjectivity versus objectivity; individualism versus altruism; and rules versus standards (Oetken, 1991, p.2212). The essential sign relationship between the rhetorical codes of legal discourses - for example, between individual autonomy and communal force – is made explicit in civil litigations, where discursive values and interests (of public and private

law) appear as semiotically transformed into the functions of legal procedure. Generally, conflict resolution is considered as a relevant function of civil procedure in the form of comunally enforced compensation (reparation or restoration), with an emphasis on increased protection of individuals acting as plaintiff. The ideal type of civil action in civil litigation would then account for both rhetorical or sign modes: the conflict resolution and the public interest in law enforcement.

In Critical Legal Studies, the notion of ‘‘discourse’’ is understood differently from Kevelson’s account, and regarded as being closer in meaning to Saussurean defintion: discourse is a series of occurrences of a *language*, produced by a given speaker at a given time, a collection of instances of *parole.* The “grammar“ of legal discourse allows legal semiotician to trace the way legal system produces meaning and analyzing the discursive levels at which rhetorical tropes can occur in form of rhetorical commitments. Therefore, we may be tempted to admit that the whole identity of each particular legal discourse is created through rhetorical commitments of the lawyer - but we should not attribute to rhetorical commitments the task of doing an overly onerous job , of playing too many roles at the same time. While rhetorical arguments of persuasion are usually made by a lawyer, concerning *logos* - the logical ends or purposes of discursive practice (i.e in our case – the functions of litigation), - a good lawyer would also rely on pathos (invoking client’s expections or fears), and on *ethos*, presenting the constitutive elements of legal ethos, such as prudence, virtue and goodwill.

Another important disciplinary problem of legal semiotics that deserves discussion in regards of rhetorical issues is the problem of disciplinary competence of a legal semiotician. According to Balkin, semiotic sensitivity to discourse (rhetoric) is of utmost concern for the making of knowledge (inquiry), because the objective of the legal semiotician is to *rhetorize* legal discourse: “The purpose of semiotic study is to understand the system of signs which creates meaning within a culture. The legal semiotician seeks to identify what might be called the “grammar” of legal discourse—the acceptable moves available in the language game of legal discourse” (Balkin, 1991, p.1845). In legal semiotics, inspired by Peirce’s *Semeiotic*, Balkin's

'acceptable moves' in the language of legal discourse roughly corresponds to the moves from **speculative grammar** (the second branch of semiotics) to **speculative rhetoric** (the third branch of semiotics), i.e. to the move from the level of abstract definition to that of pragmatic clarification, such that the third branch of semiotics is the most pragmatic division of semiotics. Thus, in Peircean semiotics, the disciplinary competence of a legal semiotician concerns a critical assessment of the power of signs to move agents and to change the habits, i.e. to modify a person's tendencies toward action (CP 5.476(1907)). Legal semioticians seek to revitalise theoretical legal thinking demonstrating that the ultimate logical interpretant in the universe of legal discourse is best characterised as a habit of legal practice/action, or a modification of such a habit, contributing to the development of a theory of analytical rhetoric and its application to examples of legal argumentation. Another approach to legal semiotics – highly popularized Greimasian narrative semiology of law –makes it possible to widen the range of disciplinary competence of legal semioticians. In order to understand what permits us to make sense out of the whole legal discourse, the followers of Greimasian legal semiotics seek systematically to apply the insights of Greimasian semiotics to legal discourse, looking for "basic structures of signification" and the basic grammar of sense construction in legal discourse. Greimasian semiotics of law posits the following disciplinary limits of semiotic analysis. First of all, the semiotics analysis of a specific legal text (which is a product of "*production juridique*", i.e. a product of the performance of the legislator), presupposes reflecting on the semiotic status of legal discourse as a whole. By legal discourse Greimas and Landowski understand a subset of text that is part of a larger set made up of all the texts in any particular natural language. Secondly, the specific subset of (legal) texts presupposes the linear manifestation of language on the syntagmatic level; on the paradigmatic level, the specific organisation of legal language phrastic and transphrastic units implies the existence of a specific connotation underlying this type of discourse (legislative vs. referential types of legal discourse) (Greimas & Landowski 1976).

The described properties of legal discourse presuppose the specific disciplinary objectives of inquiry for practitioners of Greimasian legal

semiotics. Among those objectives, the most important one is the application of narrative models (including narrative typifications of professional behaviour) to the pragmatics as well as the semantics of both fact and law construction in the courtroom (Jackson, 1988e; Jackson, 1988b). Another important objective of legal semiotics is to develop the interdisciplinary model of legal communication, represented as a particular stock of narratively-constructed themes, against which the individual encodes, stores, retrieves and communicates individual events (Jackson, 1994).

Analyzing some of the work of legal semiotics in the light of disciplinary integrity may lead to a certain questioning of the disciplinary identity of legal semiotics. Even for for many legal scholars, the disciplinary status of legal semiotics is unclear and ambiguous. On one hand, there is a sceptical attitude expressed towards the existence of explicit methodological intertextuality between Greimasian semiotics and Hart's tradition of legal positivism. Due to that intertextuality, some legal scholars consider legal semiotics as a radical form of criticism against normativism rather than legal positivism in general, since semiotics of law shares the same methodological and epistemological assumptions with legal positivism. Peter Goodrich also sees legal semiotics as "the apotheosis of positivism in the addition of a further layer of descriptive metalanguage superimposed upon the dominant belief in the univocality of legal language" (Goodrich, 1984b, p.183). Bernard Jackson argues against this viewpoint, claiming that Greimasian legal semiotics is a radical criticism of legal positivism, even if it still privileges essentialist view of language; it is also able to mediate critically between legal realism and legal positivism by clarifying the interrelations between sense and meaning (Jackson, 1990).

Although different approaches within legal semiotics tend to be positively deconstructive and critical, the rather sparse legal semiotics scholarship hasn't contributed to the accumulation of common methodology, since the writings of legal semioticians would seem to form a single corpus only at the level of interdiscursivity, lacking the disciplinary integrity. From this point of view, legal semiotics is hardly a discipline, but rather an open-ended "meta-discourse", aimed at evaluating and producing critical meta-language (or meta-discipline),

providing either a language within which to study the traditional methods of "legal science" (Greimasian legal semiotics, Peircean semiotics) or a useful auxiliary tool to advance some legal disciplines. Nevertheless, considering the existence of autonomous meta-language, we may accept that, following Landowski, legal semiotics can be viewed as a sub-discipline of general semiotics.

References

Adeodato, J. M. (1999). The Rhetorical Syllogism (Enthymeme) in Judicial Argumentation. *International Journal for the Semiotics of Law/ Revue Internationale de Semiotique Juridique* 12, pp. 135–152.

Agar, M. (1986). Institutional discourse. *Text* 5, pp.147-168.

Alexy, R. (1989). *A Theory of Legal Argumentation*. Oxford University Press.

Anscombre, J.-C., & Ducrot, O. (1983). *L'argumentation dans la langue* . Bruxelles : Pierre Mardaga

Balkin, J. M. (1991). The promise of legal semiotics. *University of Texas Law Review*, vol.69, pp.1831–1845.

Ballweg, O. (2009). Analytical Rhetoric, Semiotic and Law. In Gräfin von Schlieffen, K.(Ed.). *Analytische Rhetorik. Rhetorik, Recht und Philosophie*. Bd.1 Frankfurt am Main, Berlin, Bern, Bruxelles, New York, Oxford, Wien: Peter Lang International Academic Publishers, pp.119-124.

Bally, C. (1965[1932]). *Linguistique générale et linguistique française.* 6th edition.Berne: A.Franke [originally published in 1932 as *Linguistique générale et linguistique française.* Paris: Leroux]

Barthes, R. (1967[1953]). *Writing Degree Zero.* London: Cape (trans.lated by Annette Lavers and Colin Smith from French original - Barthes, R. (1953) L*e Degré zéro de l'écriture suivi de Nouveaux essais critiques,* Éditions du Seuil, Paris, 1953).

Barzel, Y. (1989*).Economic Analysis of Property Rights.* New York: Cambridge University Press

Berger, L.L. (2009) *Studying and Teaching 'Law as Rhetoric': Between Reason and Power* (August 8, 2009). Available at SSRN: http://ssrn.com/abstract=1446062

Bhatia, V. K. (1993). *Analysing genre:Language use in professional settings.* London: Longman.

Bhatia, A., & Bhatia, V.K. (2011). Discursive Illusions in Legislative Discourse: A Socio-Pragmatic Study. *International Journal for the Semiotics of Law/ Revue Internationale de Semiotique Juridique* 24/1, pp. 1-19.

Bourdieu, P.(1987). The Force of Law: Toward a Sociology of the Juridical Field. *The Hastings Law Journal* vol.38, pp.814-853

Carzo, D., & Morabito, G. (1988). Report on the Third International Colloquium on Legal Semiotics. In Sebeok, T.A., and Umiker-Sebeok, J. (Eds.). *The Semiotic Web 1987*. Berlin, New York: De Gruyter Mouton, pp. 727–748.

Derrida, J. (1992). Force of Law: The Mystical Foundations of Authority, In Cornell,D., Rosenfeld,M., Carson, D.G. (Eds). *Deconstruction and the Possibility of Justice,* New York: Routledge, pp.3-67

de Man, P. (1986). *Resistance to Theory*. University of Minnesota Press.

Dubois, J. (1970). *Rhetorique generale par le Groupe μ.* Paris: Larousse.

Eco, U. (1976). *A Theory of Semiotics*.Bloomington: Indiana University Press.

Eco, U. (1991). *The limits of interpretation*. Bloomington: Indiana University Press.

Facchini, M. & Grossman, P. A.(1999). Metaphor and Metonymy: An Analysis of R.A.V. v. City of St. Paul, Minnesota. *International Journal for the Semiotics of Law/ Revue Internationale de Semiotique Juridique* 12/2, pp. 215-221

Goodrich, P. (1984a). Rhetoric as Jurisprudence: An Introduction to the Politics of Legal Language. *Oxford Journal of Legal Studies* (1984) 4 (1), pp.88-122.

Goodrich, P. (1984b). Law and Language: An Historical and Critical Introduction. *Journal of Law and Society* 11(2), pp.173-206.

Greimas, A.J., & Landowski, E. (1976). Analyse semiotique d'un discours juridique. In Greimas, A.J. *Sémiotique et sciences sociales*. Paris: Éditions du Seuil, pp.79-128.

Foucault, M. (1972[1969]). *The archaeology of knowledge.* New York: Pantheon Books. (translated by A. M. Sheridan Smith from French

original - Foucault, M. (1969). *L'Archéologie Du Savoir*. Paris: Gallimard).

Habermas, J. ([1968] 1971). *Knowledge and Human Interests.* (trans.). J. J. Boston: Beacon.

Habermas, J. (1979). *Communication and the Evolution of Society*. Toronto: Beacon Press.

Habermas, J. (1987). *Theorie des kommunikativen Handelns.* Frankfurt: Suhrkamp.

Habermas, Jürgen (1996). *Between facts and norms: Contributions to a discourse theory of law and democracy*. Cambridge: Polity Press.

Hjemslev, L. (1961). *Prolegomena to a theory of language.* Madison: University of Wisconson.

Horovitz, J. (1972). *Law and Logic: A Critical Account of Legal Argument.* New York and Vienna: Springer-Verlag.

Jakobson, R. (1939). Signe Zero. In Jakobson, R.(Ed.) *Selected Writings*. The Hague: Mouton, pp. 211–19

Jackson, B. S. ([1985] 1997). *Semiotics and Legal Theory*. Liverpool: Deborah Charles Publications. (Reprint from

Jackson, B. S. (1985). *Semiotics and Legal Theory.* London: Paul Keagan)

Jackson, B. S. (1988b). *Law, Fact and Narrative Coherence*. Merseyside: Deborah Charles Publications.

Jackson, B. S. (1988e). Narrative Models in Legal Proof. *International Journal for the Semiotics of Law/Revue Internationale de Sémiotique Juridique*, 1(3), pp.225–246.

Jackson, B. S. (1990). On Scholarly Developments in Legal Semiotics. *Ratio Juris* 3/3 , pp. 415-424.

Jackson, B. S. (1994). Towards an Interdisciplinary Model of Legal Communication. In Jackson, B. S.(ed.) *Legal Semiotics and the Sociology of Law*. Oñati: International Institute for the Sociology of Law, pp.97–110.

Jackson, B. S.(1996). *Making Sense in Jurisprudence.* Liverpool: Deborah Charles Publications.

Jemielniak, J. (2002). Just Interpretation: The Status of Legal Reasoning in the Continental Legal Tradition. *International Journal for the Semiotics of Law. Revue Internationale de Semiotique Juridique* 15, pp.325–335

Kaldis, B. (2003). Law, Aesthetic Symbolism and Utopia: a Kantian Reading. *International Journal for the Semiotics of Law/ Revue Internationale de Semiotique Juridique* 16, pp. 233–258

Kennedy, D. (1979). The Structure of Blackstone's Commentaries. *Buffalo Law Review* 28, pp.205-213.

Kevelson, R. (1977b). Reversals and Recognitions: Peirce and Mukarovsky on the Art of Conversation. *Semiotica* 19/3-4, pp. 281–320

Kevelson, R. (1978). *Introduction to a Semiotics of Interrogative Constructions.* Lisse: The Peter de Ridder Press.

Kevelson, R. (1980). Semiotics and Art of Coversation. *Semiotica* 32-1/2, pp.53-80.

Kevelson, R. (1985). Riddles, legal decisions, and Peirce's Existential Graphs. *Semiotica* 57-3/4, pp.197-233.

Kevelson, R. (1987).*Charles S. Peirce's method of methods*.Amsterdam-Philadelphia : J. Benjamins Pub. Co

Kevelson, R. (1990). Peirce, paradox, praxis: the image, the conflict, and the law. *Approaches to Semiotics vol. 94*. Berlin, New York: Mouton de Gruyter.

Kevelson, R. (1992). Property as Rhetoric in Law. *Cardozo Studies in Law and Literature*. vol. 4, no. 2, pp.189-206.

Kevelson, R. (1998). Discussion on J. Touchie's Response to B. Jackson's "MacCormick on Logical Justification in Easy Cases: A Semiotic Critique"", *International Journal for the Semiotics of Law / Revue Internationale de Semiotique Juridique 11/31* , pp. 67-71

Kratochwil, F. (1989). *Rules, Norms and Decisions, On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Society*. Cambridge, England: Cambridge University Press.

Kristeva, J. (1967). Bakhtine, le mot, le dialogue et le roman. *Critique*, XXIII/239, pp. 438-65

Lotman, J.M. (1972). *Analyz poetitsekogo teksta*. Leningrad

Lotman J.M.; Uspenskij B.A.; Ivanov, V.V.; Toporov, V.N. and Pjatigorskij, A.M. =Lotman, J.M. (1975). Theses on the Semiotic Study of Cultures (as Applied to Slavic Texts). In Sebeok T. A.

(ed.), *The Tell-Tale Sign: A Survey of Semiotics*. Lisse (Netherlands): Peter de Ridder, pp. 57–84

Lotman, M. (2009). Rhetoric: Semiotic Approaches. *Elsevier Encyclopedia of Language & Linguistics* (2nd edition). Vol. 10, pp. 581-588

Mathesius, V. (1929). *Functional Linguistics*. Proceedings of the First Congress of Slavists. Prague.

Mattei, U. (2000). *Basic Principles of Property Law*. Greenwood Press.

Milovanovic, Dragan (1992). *Postmodern Law and Disorder: Psychoanalytic Semiotics, Chaos and Juridic Exegeses*. Liverpool, U.K.: Deborah Charles Publications.

Morris, C.W. (1938). Foundations of the Theory of Signs. In Neurath, O. (Ed.) *International Encyclopedia of Unified Science*. vol. 1/2. Chicago: University of Chicago Press.

Mukařovský, J. (1970). *Aesthetic Function, Norm, and Value as Social Facts*. (Translated by M. E. Suino). Ann Arbor: University of Michigan Press.

Mukařovský, J. (1977). *The Word and Verbal Art: Selected Essays*. New Haven: Yale University Press.

Oetken, J. P. (1991). Form and Substance in Critical Legal Studies. *Yale Law Journal* 100, pp. 2209-2228.

Peczenik, A. (1989). *On Law and Reason*, Dordrecht: Kluwer.

Perelman, C. (1976). *Logique juridique*. Paris: Dalloz.

Perelman, C., & Olbrechts-Tyteca, L. (1958). *Traité de l'argumentation: La nouvelle rhétorique*. Paris: Presses Universitaires de France.

Perelman, C. (1977). *L'Empire rhétorique*. Paris: Vrin.

Pintore, A. (2000). *Law without Truth.* Liverpool: Deborah Charles Publications.

Postema, G. J. (2001). P*hilosophy and the Law of Torts.* Cambridge: University Press.

Searle, J. (1999). *Mind, Language and Society*. New York: Basic Books.

Sebeok, T. A. (1976). *Contributions to the Doctrine of Signs.* Bloomington: Research Center for Language and Semiotic Studies.

Sebeok, T.A., & Sebeok-Umiker,J. (1979). “You Know my Method“: A Juxtaposition of Charles S. Peirce and Sherlock Holmes. *Semiotica* 26-3/4, pp.203-250

Šklovskij, V. (1990[1925]). *Theory of Prose.* Elmwood Park: Dalkey Archive. (translated from Russian original by Benjamin Sher - Šklovskij, Viktor(1925) *Teorija prozy*.)

Threadgold, T. (1999). Law as/of Property, Judgment as Dissension: Feminist and postcolonial Inerventions in the Networks. *International Journal for the Semiotics of Law / Revue Internationale de Semiotique Juridique* 12/4, pp.369-396

Toulmin, S. (1958). *The Uses of Argument*. New York: Columbia University Press.

van Eemeren, F.H.(2001). *Crucial Concepts in Argumentation Theory*. Amsterdam: Amsterdam University.

Viehweg, T. (1965). *Topik und Jurisprudenz*. Munchen: Beck Verlag.

Vološinov, Valentin (1973). *Marxism and the Philosophy of Language.* Harvard University Press.

von Wright, G. H. (1968). *An Essay in Deontic Logic and the General Theory of Action*. Amsterdam: North-Holland Pub.

Völzing, P.-L. (1979). *Begründen, Erklären, Argumentieren*. Heidelberg: Quelle and Meyer.

Wetlaufer, G. B. (1990). Rhetoric and Its Denial in Legal Discourse. *Virginia Law Review*, vol.76/8, pp. 1545-1597

Williams, R. (2005). Meta-semiotics and Practical Epistemology. *Theory & Psychology*, vol. 15(5), pp. 711–737.

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