*Draft for discussion purposes*

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**Legal Text as a Description of a Possible World. Preliminary Discussion of a Model of Legal Interpretation**

### Abstract

In this paper I would like to outline a comprehensive theory of legal interpretation based on an assumption that legal text, understood as the aggregate of texts of all legal acts in force at a particular time and place, describes one rational and coherent possible world. The picture of this possible world is decoded from the text by interpreters and serves as a holistic model to which the real world is adjusted when the law is applied.

From the above premise I will limit myself to drawing two conclusions for how legal interpretation should be carried out. First, I argue that the possible world described by the legal text has to be 'accessible' from the real world, i.e. it has to be feasible to transform the actual world into the described one. Were it otherwise, the possible world could not serve as a model for adjustment. The accessibility requirement imposes obligations on the interpreters to secure the rationality of the possible world decoded from the text, amongst other to secure that the description of this world is not contradictory and – as a consequence – the law of excluded middle is obeyed in the possible world described by the legal text.

Secondly, I argue for the inevitability of interpretative discretion arising from the requirement to decode a sufficiently 'saturated' picture of the possible world., i.e. possessing enough properties to resemble the actual world. As texts have a limited number of sentences and worlds have an unlimited number of properties, interpreters have to supplement the picture of a possible world to achieve its coherence. This involves the inclusion of some additional, non-predetermined features that integrate with the properties of the world predefined by the legal text. This process of saturation consists of filling in so-called 'places of indeterminacy' (Roman Ingarden) with content implicated by other features of the possible world. I also argue that the discretion resulting from the necessity of filling in the places of indeterminacy is justified by the requirement of fulfilling the intention of the lawmaker to make the possible world described by the legal text real.

The theory presented here is based on contemporary theories of discourse representation and so-called 'text-world theory' by J. Gavins. Phenomenalism and causal (historical) theories of reference provide its philosophical background.

## 1. Introduction

This paper presents an element of a broader legal-philosophical concept based on the assumption that the law is an instrument of designing the future of a given society. The main tool used to design the future is a legal text, which describes the future possible world[1]. Those to whom the law is addressed have an obligation to transform what is described by the legal text into reality and that obligation can have various origins. It originally derives from the lawmaker's illocutionary intention, i.e. the intention to have the legal text serve as a model for shaping the real world[2]. An additional source of the obligation to adjust the actual world to the model delineated by the legal text is the threat of coercion by a sovereign (an entity with appropriate actual force). In the event of noncompliance, the sovereign may force the addressees of the law to realize a possible world described by the legal text (where the lawmaker and the sovereign do not have to be the same at a given point in time). Neither the illocutionary intention nor threat of coercion by the lawmaker/sovereign preclude a situation where the addressees of the law accept the vision of the world presented in the legal text and make it happen without any need for coercion.

Under the conceptual framework presented here the key concepts for the law can be defined as follows:

a) **lawmaking** is designing the future by describing or changing a description of the future possible world, with the use of the legal text understood as a collection of texts of all acts of law in force at a given moment in time;

b) **legal interpretation** is a text-based depiction of a possible world to be made real by a given society;

c) **application of law** is the adjustment of the real world to the picture of a possible world presented in the legal text or punishment for failure to adjust.

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[1] The contention that legal language is descriptive may surprise readers because of a long tradition of treating utterances of a lawmaker as normative statements (commands). This tradition, to my view, has been based in a misguided application of the speech-act theory to the analysis of legal language, and caused lawyers to believe that a legal rule is a single utterance of a single speaker, resembling an oral command. I question such an approach and believe that legal language should be understood as a set of written utterances (a discourse) that are descriptive in their nature (which is confirmed by the use of verbs like "is", "shall" and other verbs of assertion). As such, legal language should rather be analysed as a set of text-acts and treated as a complex tool for describing a model of reality which is then set as a model to which to adjust the real world. What lawyers traditionally call 'normativity' finds its source outside legal language and not in the language itself.

[2] For illocutionary intention see the argumentation in further parts of the paper, devoted to lawmaking understood as creating a legal text (p. 7 *et seq.*).

Hence, the law is a tool for changing the reality. The change takes place by way of permanently adjusting the current reality to the description of a potential reality contained in the legal text. I assume that a specific legal provision is a description of an element of the potential reality (a state of affairs), while the entire legal text in force at a particular time is a description of one potential reality (a possible world).

In this paper I am limiting myself to discussing some issues in legal interpretation resulting from the above-presented concept of law. The focal point of the conceptual framework presented here is the legal text and not its author. Hence, this concept of legal interpretation is text-centric, unlike a majority of conceptual frameworks for the legal interpretation, which can be considered author-centric. The reason for concentrating on the legal text is the conviction that it is the only objective tangible fact whose existence is not challenged by legal philosophers. The same cannot be said about the lawmaker or intentions ascribed to the lawmaker or about the meaning of the text – their existence, nature and impact on the interpretation have been continually questioned in legal philosophy.

## 2. The main theses behind the concept

Set forth below are the main theses making up the concept of legal interpretation presented in this article.

i. Legal text ($T_o$), understood as the aggregate of all provisions contained in all acts of law in force at a given place and time, is a description of one possible world (PW).

ii. As a rule[3], every legal provision, treated as a sentence of the legal text from one full stop to another ($P_p$), describes one property ($W_1$) of PW, which is a state of affairs in the possible world PW. One property $W_1$ may be described by several $P_p$s.

iii. The world PW has an infinite number of properties $W_1$. The text $T_o$ describes a finite number of such $W_1$. This means that $T_o$ does not fully describe the world PW. Therefore, in the process of legal interpretation, the world PW must be saturated with additional elements not described in the $T_o$ to make the structure of the world PW sufficiently rich to be a model for adjusting the real world (RW).

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[3] Legal text also contains provisions which do not describe a possible world but present a manner in which a description of a possible world may be changed. Those provisions exist both in public law (e.g., constitutional provisions describing a legislative procedure) and in private law (e.g., provisions concerning contracts or statements of will). Those provisions are an equivalent of rules of change according to H.L.A. Hart's terminology.

iv.     The description of the world PW is hierarchical – certain parts of $T_o$ describe general properties of PW, while others its detailed properties.  The description of PW's detailed properties cannot modify PW contrary to the description of PW included in those parts of $T_o$ which are higher in the hierarchy (e.g., constitutions).

v.      PW is not a real (actual) world, PW is a possible world, accessible from the real world RW: causalities existing in RW make it possible to achieve PW. PW's accessibility is the key requirement that influences the way in which $T_o$ is understood.  For PW to be accessible from RW, it must be ontologically similar to the actual world, hence, among other things, it must be a rational world in which the law of excluded middle is obeyed. This means that the description of the possible world PW contained in the legal text must not be contradictory.

vi.     The primary obligation of the addressees of the law is that of making PW real. To achieve the world PW means that such properties $W_1$ (states of affairs) will come into existence in the world RW, which will make each $P_p$ true and thus will make the whole $T_o$ true in RW.

vii.    The origin of the obligation to make PW real is the sovereign's intention to change RW in the direction indicated by $T_o$. This is an illocutionary – not locutionary – intention: it is not an intention as to the specific semantic meaning of a legal text but an intention to have a legal text serve as a model for adjusting the real world. Another source of obligation may be a threat of coercion by the sovereign towards those who fail to make the world PW real, or the acceptance of the vision of the world described by PW by the addressees of the law.

viii.   Through legal interpretation one depicts a fragment of the world PW, which is to serve as a model for adjustment of the relevant component of RW.

ix.     The application of law consists of comparing the world RW with the depiction of the world PW by persons described as authorized to do so by $T_o$. It involves those persons formulating individual and specific utterances (individual and specific rules) ordering a change of RW in such a way that RW's properties would be changed into $W_1$ described by $T_o$.

x.      The obligation to make PW real is more important than the obligation to make a single $W_1$ (a single state of affairs in PW) real. If making any of $W_1$ real makes it impossible to make the whole PW real, then the realization of such $W_1$ should be abandoned (this thesis highlights the key significance of the principle of proportionality in law).

### 3. Philosophical underpinnings

In this section I briefly discuss the philosophical background for the above listed theses; in particular, assumptions as to the philosophical and linguistic bases for the concept.

**I.    The meaning of a text as a complex mental representation – the discourse representation theory and the text world theory**

One of the assumptions behind the concept presented here is that the interpretation of a text consists of reading it and – as a result of reading – creating in the interpreter's mind a complex structure of meanings constituting a mental representation of the world described in the text. This contention is an element of two conceptions: a philosophically broader theory of discourse representation and a narrower one limited to the text, viz. text world theory.

The discourse representation theory was first presented by H. Kamp[4]. The basic assumption for this theory is that a discourse − understood as a complex process of language communication unfolding over time − is interpreted by its participant as a whole (as a single expression), even if it usually consists of many expressions. Such holistic interpretation is possible according to the theory because each utterance of a discourse incrementally contributes to a complex mental representation in the interpreter's mind, and this constitutes an integral representation of that discourse.

The discourse representation theory in relation to literary interpretation evolved into the text world theory developed by J. Gavins[5]. According to this theory, the text is inevitably (because of biological and cognitive factors) understood as a picture of the world which the reader creates in his or her mind as a mental representation. The process of creating a mental representation of the world as a picture of the world is as follows:

a)  Each sentence of a text projects an element of mental representation – a depiction of a state of affairs. For instance, the first sentence of G. Orwell's *Nineteen Eighty-Four* "It was a bright cold day in April, and the clocks were striking thirteen." brings forth a mental representation of the state of affairs in which certain properties exist concerning, *inter alia*, temperature, season and time.

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[4] H. Kamp, *A Theory of Truth and Semantic Representation*, [in:] J.A.G. Groenendijk, T.M.V. Janssen, and M.B.J. Stokhof (ed.), *Formal Methods in the Study of Language* .Mathematical Centre Tracts 135, Amsterdam 1981.

[5] J. Gavins, *Text World Theory*, *An Introduction*, Edinburgh 2007.

b) This picture of the state of affairs is integrated by the reader into the epistemic framework of a possible world. The reason for such perception of possible states of affairs is the fact that the perception of the actual states of affairs always takes place within the framework (context) of the real world. It is a cognitive impossibility to perceive states of affairs in isolation from the world.

c) Certain sentences of a text co-refer, i.e. they relate to the same state of affairs. Each new sentence of a text which co-refers modifies the created mental representation; against the background of such changed representation, the next co-referring sentence of the text is interpreted. For example, the second sentence of *Nineteen Eighty-Four*: "Winston Smith, his chin nuzzled into his breast in an effort to escape the vile wind, slipped quickly through the glass doors of Victory Mansions" modifies the mental representation created by the first sentence from a) above by adding new elements to that representation (a man, a building, the wind, etc.). It is so because the sentence quoted is an element of the same discourse (in this case, the text of the same novel) whose representation is created incrementally in the reader's mind as he or she reads further sentences of the text.

d) Reading all sentences of the text which refer to the same state of affairs creates a complete mental representation of that state of affairs[6] – such mental representation is the meaning of the fragment of the text which is interpreted.

e) The mental representation of all states of affairs described by a given text creates the mental representation of that text's world.

The process of creating the mental representation of a text originally arose in the context of literary texts; as it is universal there is no reason why it could not apply to other types of texts, including legal texts.

## II. Application of the text world theory to a legal text

I am assuming that reading a legal text also leads to the creation in the reader's mind of a picture of the world as a mental representation of the read text, because the legal text designs a possible world by describing it. For instance, in the world described by a Polish legal text the Republic of Poland is a democratic state governed by the rule of law (Article 2 of the Polish Constitution) in which he who kills a man is subject to a penalty (Article 148 of

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[6] For the completeness of mental representation see a discussion on supplementing places of indeterminacy in part 4 of this paper.

the Polish Criminal Code). Every legal provision understood as a sentence from one period to the next designs an element of the possible world[7].

In the case of a legal text, the reconstruction of the text world consists of combining meanings of individual provisions into one whole. First, an interpreter selects sentences of the legal text which refer to the same state of affairs – hence s/he selects the relevant legal provisions. Next, taking into account all those sentences/provisions, s/he creates a mental representation of the state of affairs to which the meanings of individual provisions contribute, supplementing or modifying such mental representation. For instance, when reading Article 148 §1 of the Polish Criminal Code[8] one first establishes a preliminary representation of the state of affairs in which someone kills a man and is subject to a penalty. Next, one modifies that mental representation after reading Article 25 of the Criminal Code[9], according to which a person who acts in self-defence does not perpetrate a crime. In further stages of the reconstruction, the interpreter adds further elements of the state of affairs to their mental representation, described by other relevant legal provisions. The final outcome of the process is a holistic mental representation of the state of affairs related to 'killing a man and being subject to penalty', created as a result of determining the meaning of all sentence of a legal text relevant for that state of affairs.

According to the assumptions of the discourse representation theory and the text world theory, a given text makes up the mental representation of that text's world as a result of integrating mental representations of all states of affairs described. In relation to a legal text, we may say that all provisions of a legal text refer to a single complex state of affairs which comprises the legal text world, and this legal text world can be understood as a possible world.

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[7] The idea of a world created by a legal text is not new. As pointed out by R. Sarkowicz:*"Just as any other text postulates, delineates or describes a certain world, also in a legal text we can find a vision of a certain world (…). A reconstruction, description of such world, which is depicted with the use of a legal text, is what we refer to as its descriptive (literal) interpretation"*. R. Sarkowicz, *Poziomowa interpretacja tekstu prawnego* [Level-based interpretation of a legal text], Kraków 1996, pp. 96-97. A similar concept of the *postulated world* was presented earlier by Jan Woleński in *Logiczne problemy wykładni prawa* [Logical problems of legal interpretation], Kraków 1972.

[8] 'Whoever kills a human being shall be subject to the penalty of the deprivation of liberty for a minimum term of 8 years, the penalty of deprivation of liberty for 25 years, or the penalty of deprivation of liberty for life.'

[9] 'Whoever in necessary defence repels a direct illegal attack on any interest protected by law shall not be deemed to have committed an offence.'

### III. Making, interpreting and applying law in terms of the presented conceptual framework

The conceptual theses formulated above may be translated into three processes: the process of lawmaking, legal interpretation and the application of law. The discussion of each of those processes may help to identify consequences which this concept entails for discussions in legal philosophy.

#### a) Lawmaking

To make laws is to depict a possible world by adding/removing descriptive sentences in relation to an already existing description (an earlier legal text)[10]. Descriptive sentences (legal provisions) are formulated based on rules characteristic for the positivist concept of law – lawmaking is a social fact and is carried out by entities authorized to do so, whereas the issue of the conformity/non-conformity of a legal provision with morality is not relevant when deciding whether it will be considered as a valid element of the description of the possible world. Hence, no validating relation exists between law and morality at the level of lawmaking. It may exist, however, at the level of legal interpretation, as elaborated upon in point b) below.

As mentioned at the beginning of this paper, an important role at the stage of drafting a legal text is played by the lawmaker's illocutionary intention, i.e. the intention that a legal text should be a model for adjusting the actual world. The illocutionary intention, unlike the locutionary intention, is not the intention to give a specific semantic meaning to the text. It is an intention as to the illocutionary force of a text: that the text would be a source for designing a model to which the actual world should be adjusted. This anchors the normativity of the law in the person of the lawmaker without going into problematic issues of the original meaning of the text and how a collective body may express a locutionary (semantic) intention. I accept that it is possible to attribute an overall illocutionary intention to a lawmaker acting as a group of people in the form of "I want this text to become a law", but it is not possible to attribute a specific locutionary intention of "I want the text T to mean Y". The meaning of a text is determined by an interpreter, relying on his knowledge and experience at the time when making the interpretation, as discussed in the next section of the paper.

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[10] A description of a world is created as a rule at the level of public law - the level at which provisions of the *ius cogens* type are made. Some legal provisions are of the *ius dispositivum* type, hence they allow addressees of law to describe by themselves a fragment of the possible world which concerns them– e.g. by executing an agreement or a will. This means that not the entire possible world PW is determined by the lawmaker's description because some of its aspects are determined *via* private descriptions by addressees of law, as part of private actions with legal consequences.

b) *Legal interpretation*

This is a stage when the interpreter of legal text reconstructs from it a representation of a possible world. This is done by establishing a meaning of a certain group of provisions which describe interconnected elements of a potential reality. The interpreter wants to reconstruct this description in order to get a point for reference for the actual reality and check whether it conforms to the law. This reconstruction allows the interpreter to reach an explicit model to which to adjust the actual world. Under the theory presented in this paper, this explicit model performs the function of a legal rule.

This process takes place within the framework of signification (the understanding of the text), and not the process of communication (the understanding of the author of the text). As such, it relies on the determination of the meaning of the text by referring not to the lawmaker's locutionary intention, but to the public meaning of the text established at the time of making the interpretation[11].

From a philosophical perspective, the relation of the interpreter to the text and to reality is his relation to two phenomena: the phenomenon of the text and the phenomenon of the reality. In the process of application of the law, the phenomenon of the reality is available to the interpreter not directly but through phenomena of texts describing the actual reality or phenomena of verbal utterances (e.g. witness statements, information on the facts of a matter, etc.). Hence, an epistemological compatibility between the real world and the paradigm of behaviour/depiction of the possible world is ensured – both are available to a lawyer as the phenomena of texts or phenomena of verbal utterances.

To realize how the process of understanding the text (including a legal text) proceeds, it is necessary to bear in mind that a word which is read causes a mental representation to be created in the reader's mind – the meaning of the word read. How is this representation created? In the philosophy of language we can find many ideas explaining this process. For the purposes of our discussion we may assume that the mental representation brought about by a word read (or heard) depends on the earlier experience of each person. The process of learning a language in the earliest stages is therefore based on explanations of how words are connected with the world (e.g., through ostension, when we say a word and point to its referent, or through description when we give a definition of a term), so that it will later be possible to trigger in the mind of a given person the representation (memory, reminiscences)

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[11] This thesis supports dynamic theories of law interpretation, opposing, among other things originalism as a theory of constitutional interpretation. However, the nature of this paper prevents me from a more elaborate criticism of originalism and other static concepts of legal interpretation.

of the reality, with which persons speaking a given language usually associate that word[12]. Thus, our understanding of the language is influenced by experiencing the world, understood phenomenologically: partially different from and partially similar to the experience of other people. To the extent people share experience, the understanding of certain terms is the same or similar. To the extent experience is determined by the unique situation of a given person, there are differences and disputes as to the understanding of certain terms. The differences in mental representations produced by a given word, which are a result of the differences in our individual histories, usually do not impede successful communication; however, they may cause ambiguity and differences in understanding of a given word.

Under the approach espoused here, the interpretation of a legal text does not consist of the simple determination of the meaning of a single utterance of a lawmaker followed by the determination of the references of those expressions during the process of the application of the law in the real world. That particular approach to interpretation is the result of treating the lawmaker's utterances as if they were individual oral orders, which is relatively common in legal philosophy[13]. The appropriate interpretation of legal text is rather the interpretation of a number of written utterances – legal provisions – comprising the lawmaker's discourse. This process requires combining those provisions into one whole; the reconstructed fragment of the potential reality can be described by many legal provisions, whose content somewhat overlaps. For instance, a provision of a statute and a provision of the Constitution may both refer to the same element of reality, just as different parts of a novel may describe the same element of a fictional reality – e.g. a protagonist's flat. In this configuration, each of those provisions adds a new element to the description, enhancing the reader's knowledge of the reality described.

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[12] I am assuming that a mental representation may also include a representation brought about by theoretical and abstract terms (e.g., universalia). I have arguments to support this claim; however, the framework of this paper does not make room for their presentation. This argumentation is based on David Hume's 'copy principle' and Ruth Millikan's concept of language presented in *Language, Thought and Other Biological Categories: New Foundations for Realism*, MIT, 2001.

[13] The blame for this misguided approach to legal language can be attributed, at least partially, to the general application of the speech act theory in legal philosophy; the theory is not well suited to analyze written communication and is not sufficiently precise to analyze sets of utterances (discourses). See: M. Stubbs, *Can I Have That In Writing, Please? Some Neglected Topics in Speech Act Theory* Journal of Pragmatics, Volume 7, Issue 5, November 1983, Pages 479–494.

c) *The application of law*

The process of application of law in the light of the theory presented here is a process:

i. of determining whether the real world corresponds to the paradigm for adjustment reconstructed in the process of interpretation and whether any irregularities exist,

ii. of taking measures to adjust the real world to the possible world by formulating individual and specific rules ordering or prohibiting certain actions, ordering redress of damage or rendering some actions null and void (i.e. non-existent in the possible world).

As the main topic of this paper is legal interpretation, I will refrain from a deeper investigation here of the application of law. The purpose of the current brief discussion of that issue is merely to demonstrate that the concept of legal interpretation is an element of a larger whole, covering both the process of making and applying law.

## 4. Examples of areas in which the concept may be applied

### I. Necessary saturation of the world PW as the justification for interpretative discretion

As mentioned among the theses presented in section 2 of this paper, the property of every text is that the number of sentences used in the text is finite whereas the number of properties of the reality which the text describes is infinite. This means that a legal text in itself is not sufficient to describe a saturated picture of the possible world, i.e. one which can be a model for the real world. A fully saturated picture of the world described by a legal text will be achieved by the inclusion of elements which constitute a frame for that world and natural supplements of that picture based– among other things – on the interpreter's specific life experience. This phenomenon, often referred to as the supplementation of 'places of indeterminacy', was highlighted by R. Ingarden[14]. Because of this disproportionality between the description and the world, it is necessary to provide additional descriptions for elements not included in the text. Consequently, the process of reconstructing the potential reality takes place by reconstructing elements expressly described by a text and later adding elements which are *not* described by the text but are necessary to reconstruct the potential reality.

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[14] R. Ingarden, *Studia z estetyki* [Studies in Aesthetics] vol. .2, PWN, Warsaw 1958, pp. 96-104

This practice of supplementing places of indeterminacy is a necessary one in the process of understanding a text and may serve as a starting point for a reflection on interpretative discretion in legal interpretation. In the process of saturating the picture of the possible world with properties not derived from the legal text, a lawyer-interpreter adds something from him/herself to the picture of the world designed by the lawmaker. In a sense, they take over the latter role.

Leaving aside the issue of semantic discretion (discretion according to HLA Hart), let us analyze the area of discretion consisting of deriving norms from norms: the area of legal inferential reasoning. Even though inferential reasoning is common in jurisprudence, it is difficult to justify in those conceptions of legal interpretation which are author-centric, and in particular in those favouring a positivistic approach. First of all, we could argue that additional norms whose author is not the lawmaker do not meet the test of pedigree. Secondly, in the light of the single author fallacy and the absence of a single, precise locutionary intention of the lawmaker, it is hard to justify how some rules derive from others. As a result, a basic question arises regarding the legitimacy of such derivation.

Alternatively, if we assume that:

a) an interpreter does not reconstruct the lawmaker's locutionary intention, but a possible world to make it real later in the process of the application of law; and that

b) the description of the possible world is finite, but the number of properties of that world is infinite,

then we will find a mandate to fill those places of indeterminacy with elements appropriate for the described elements of the reality. Were it otherwise, the implementation of the primary obligation arising from law (i.e. making the world described by a legal text real) would not be possible at all. It is not possible to 'partially' realize the world if there is a causality between the element *b*, described in a legal text and an element *a*, which is not described in it.

In addition to justifying a certain degree of legal discretion by giving it a logical connection with the obligation to make the world real, the concept proposed here provides a more holistic description of the process of inferential reasoning in law. In the classical approach, connections between norms built through inferential reasoning go in one direction: (from the underlying rule and to the rule derived from it). For that reason, the inferential reasoning in the classical understanding cannot ensure the systemic linkage between a greater number of rules. Under the conceptual framework presented here, states of affairs described by $T_o$ may be linked on many levels and in many directions with other states of affairs

occurring in the described possible world PW. Since the world PW is a normative paradigm for the real world, systemic links among properties (states of affairs in that world) are an equivalent of links among rules under the classical understanding of the system of law. Therefore, their multi-level and multi-direction nature may be contrasted with the single-level and single-direction nature of inferential reasoning in the classical approach.

Because the legal text world is a projection of a future holistic real world, it is not a paradigm for a given individual behaviour but a model of a state of affairs. As such it may be referred to complex aggregates of behaviours and effects of such behaviours. The approach presented here is more comprehensive than that of the classical understanding of a legal rule. The latter offers a paradigm for behaviour defining only the addressee, the circumstances and an action which is prohibited or ordered. In this approach, the law is seen as a collection of individual rules – paradigms for behaviour, not linked into a single whole by a wider context. Hence, a paradigm for behaviour is built in an overly individual way (e.g., it does not include links among several rules). In contrast to this, the concept of a possible world performing the function of a complex paradigm for behaviour is multi-faceted and encourages a holistic approach. Not simply a paradigm of individual behaviour, the model world allows a more universal and integrative approach for the purposes of legal interpretation.

## II.    Accessibility of the world PW  as a factor rationalizing the legal interpretation

According to one of the theses of the conception presented here, the possible world PW is a world *accessible* from the real world RW. This means that such a world must be ontologically similar to the real world.  For instance, ordinary causalities operating in RW must be sufficient to achieve PW.

The assumption of accessibility of the world described by the legal text is crucial for the process of legal interpretation. This assumption requires from the interpreter the reconstruction of the picture of the world which is rational in the sense that it does not significantly differ from the real world's actual structure.  Irrationality of the possible world would make it incompatible with the real world ('inaccessible' in the language of the theory of possible words) and this would challenge the implementation of the essential legal obligation to bring into existence the possible world described by the legal text.

The irrationality of the possible world PW could in particular consist of the law of excluded middle not applying in the world PW: a situation in which the property X simultaneously occurs and does not occur in that world.  This would entail a fundamental ontological difference between the real world (in which the law of excluded middle applies)

and the world PW. In the real world RW it is not possible for X and non-X to exist at the time; this means that the world PW, in which such situation would be possible, would not be 'accessible' from the real world.

For a lawyer interpreting the legal text $T_o$ this means that s/he cannot accept that the description of PW would be self-contradictory, that is would contain a given statement and its negation. The existence of contradictions in $T_o$ would make PW unfeasible, and then it could not serve as a model target for the real world. So if we assume that the legal text describes one rationally organized possible world, the description must not be contradictory for that world to be realized, in order to fulfil the primary obligation arising from law, which is to make that world real.

The argument of accessibility and therefore rationality of the world designed by the legal text justifies a number of arguments used by lawyers in legal interpretation: e.g. the use of *ad absurdum* argumentation and so-called 'conflict of law' rules (e.g., *lex specialis derogat legi generali*). The former does not allow for the acceptance of an unfeasible legal rule; the latter allows the interpreter to exclude one of two contradictory rules when deciding a case. All those types of argumentation under the author-centric theories suffer from a deficit of legitimacy, in the same way as argumentation based on referential rules (mentioned above). They are fully justified, however, in the light of the primary obligation imposed by the lawmaker, which is to make the possible world projected by the legal text real[15].

Finally, I would like to draw attention to a broader issue connected with the question of the ontological similarity of the real world to the world described by the legal text. The issue is whether the accessibility of the possible world depends on the presence of certain moral rules in that world. In other words, a question arises whether the legal text world must contain a certain morality to be accessible from the real world, i.e. realizable. In the case of author-centric theories, invoking morality was usually treated as modifying or even opposing the intention of a positivistic lawmaker; by contrast, under the approach presented here, elements of morality constitute a factor influencing the possible world described by the legal text. Those moral elements may either fill places of indeterminacy or even serve as a necessary element of the world to be made real, based on the assumption that it is not possible

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[15] The assumption of the rationality of the world reconstructed from a legal text is another depiction of the assumption as to the lawmaker's rationality. To date, in author-centric concepts, non-contradiction of law could be argued only based on the assumption of the lawmaker's rationality, which has raised many doubts, in particular, in the light of problems deriving from single author fallacy. The rationale presented in this paper for the requirement of non-contradiction in law and of applying legal arguments based on the non-contradiction argument sees to havem a larger explicatory potential.

to make the world real without morality. One may tentatively put forward the thesis that the possible world, deprived of any moral rules − or with a morality too different from the morality existing in the real world − is inaccessible from the real world; therefore, the reconstructed description of the possible world which does not take morality into account makes it impossible to carry out the fundamental obligations arising from law (bringing into existence the world described by the legal text). This would mean that having to take some minimum degree of morality into consideration in law is a result of the nature of law understood as an instrument of designing the future world in which a given society will operate. Failing to take morality into account would render the realization of such world impossible. Though this is a very interesting issue, related to HLA Hart's discussion of the viability thesis[16], it would merit a separate paper to do it justice.

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[16] See L. Green, *Morality in Law*, Legal Research Paper Series, Paper No 12/2013 February 2013, p. 18.