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VADIM VERENITŠ

Semiotic models of legal argumentation

TARTU ÜLIKOOL
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Department of Semiotics, University of Tartu, Estonia

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Article III Vadim Verenich 2012. **The Semiotic Model of Legal Reasoning.** *International Journal of Law, Language & Discourse* 2(3): 25–58.

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1. INTRODUCTION

1.1. The Aim, Structure and Object of the Study

The present doctoral dissertation is an exercise in exposition, comparison, criticism and construction, and this is the result of a project conceived ten years ago. We have taken different traditions of legal reasoning, and by juxtaposing them have sought to clarify and assess semiotic presuppositions, in order to outline a theoretical framework of legal semiotics that would help to lay the foundations for semiotic theory of legal argumentation. These semiotic presuppositions have been the object of our study at the University of Tartu since our bachelor's thesis (defended in 2001) and master's thesis (defended in 2006). Our interest in legal semiotics was motivated by a very strong sense of dissatisfaction with the traditional methods and paradigms of contemporary jurisprudence, especially with those ones of legal argumentation. Traditional jurisprudence committed to a model of legal unity, does not for the most part seeks to describe how the views of legal actors interact with the views of other legal actors/participants of legal discourse in real situations of legal communication. Thus, it was the consideration of legal communication as a semiotic activity that caused us to doubt that law could be conceived in terms of traditional legal concepts. Legal semiotics can be regarded as a major advance because it debunks the prevailing assumptions about the nature of legal reasoning and replaces them with what seems a far superior explanation.

The main scientific objectives of this dissertation can be briefly formulated as follows:

1) to develop a conceptual framework for practical handling of complex problems of legal argumentation as they occur in the stages of legal communication;
2) to assess issues of compatibility/conflict between existing methods of legal reasoning and our semiotic model of legal reasoning;
3) to bridge the compatible aspects of different theories/models of legal argumentation to establish a generalizable model of legal argumentation.

The first and foremost aim of this dissertation is to contribute to the development of an overall semiotic theory of legal reasoning with a special focus on the theoretical concept of conflict. In other words, our main ambition is to resuscitate traditional theories of legal argumentation by developing a less formal theory of legal argumentation. Before explaining the structure of this dissertation and mapping the issues, we would like to mention here that our critical analysis of legal argumentation may appear surprising and unusual to many legal scholars and semioticians. Since the main objective of this dissertation to bridge the gap between traditional legal theories and different semiotic theories of law, in our dissertation we tend to focus on the concept of conflict, which is the reason

for privileging the semiotic concept of tension. At first sight it seems strange if not confusing to claim that 'tension' is a key component of a semiotically sensitive theory of legal reasoning. Inevitably the problem of conflict/'tension' constitutes an important point in any theoretical attempt to integrate semiotic theories (structural semiotics of law, Peircean semiotics of law and the semiotics of the Tartu-Moscow School). From one of the basic premises of the semiotics of culture, it is understood that the more complex the semiosphere is; the more complex is its 'interpretation'. Due to semiotic 'tension' ('conflict') between different languages of cultures, the inner 'tension' between competing languages can be slowed down when 'self-description' or the development of a meta-language takes place (Lotman 1990:128). What is important now is to clarify the potential of 'tension' proper to legal argumentation, to see to what extent it supports the methodological establishment of a semiotics of legal argumentation. That much said, it is obvious the nature of reasoning in legal argumentation brings together many underlying 'parts' problems and concerns with the basic concept of an argument into very complex unity (which we might call a semiosphere, since it is a unity that masks semiotic conflicts that co-exist within this unity). If one will abandon the myth of a uniform unity of culture, and looks separately at the various semiotic groups operative within this unity (semiosphere), then the 'semiotic conflict' between the parts and the whole in the semiosphere would appear as an inherent component in modern cultural processes that bring into play the conflict among different universes of values and beliefs. The existence of such groups would emphasize both the tension between comprehension-incomprehension and the question of identity-making of subjects (Geninasca 1997).

The dissertation is divided into five chapters, and the significant part of Chapters 2 and 3 is committed to critical reflection upon the work of other scholars. In Chapter 2, we first introduce the reader to the main topic of this dissertation by providing a brief discussion of different methods of juridical interpretation and reasoning and by putting the content of this thesis into the comparative interdisciplinary context suitable for analysing empirical material. However, to consider the field of legal argumentation/reasoning in all its complexity is to contemplate a huge chunk of the modern analytical jurisprudence. No attempt is here made to survey the whole filed of legal argumentation, because the technical and methodological limitations of our thesis does not allow to include all (otherwise) necessary information for understanding the theoretical background of different approaches to the topic of legal argumentation. Rather, Chapter 2 seeks to juxtapose the most critical central issues in different theories of legal argumentation with consideration derived from semiotics. Also, for the sake of simplicity, in order to meet the estimated expectations of the readers we will disregard some complicated methods, in which one interpretative technique is inseparable from another. Instead, we will focus on traditional pure techniques of interpretation: some of those techniques are based on either subjective or objective criteria, while another group repre-

sents the combination of rigorous approaches, such as '*intentionalism'*, '*textualism'*, '*originalism'*, '*interpretivism'* and *'indeterminism'*.

In a further section that follows (Chapter 2.1), we explicitly formulate the main research questions to be addressed in this dissertation. It is worth noting that the questions underlying problematic aspects of legal argumentation, and not merely the variety of answers offered to those questions raise many semiotic issues. The first question asks whether the problem of 'conflict' is definable in terms of semiotics, as a tension between different methods of legal argumentation. If the question posed in respect of the concept of conflict is theoretical, the second question is highly practical: what kind of a legal discourse (doctrines, approaches, methods) is most suitable for encapsulating semiotic accounts of conflict?

In Chapter 3 we try to explicate important aspects of conflict in law. In doing so, we are going to interpolate the concept of conflict into legal discourse, where we can fully appreciate what is really meant by the concept of conflict in legal theory and practice. In describing conflict as a tension, conflict cannot be taken to mean that it lacks other connotations, notwithstanding that a different meaning may be attached to it by hermeneutics or phenomenology. Therefore, our semiotic analysis of legal argumentation is aided by other non-semiotic theories whose application contributes to our understanding of conflict in law. For example, in order to substantiate our claim in regards of important role played by conflict in legal discourses, we have taken the interdisciplinary support from the comprehensive range of theories (from the jurisprudential doctrine of Conflict of Laws to hermeneutics, phenomenology and deconstruction), since the implementation of those theories in the modern studies of legal argumentation has given an impetus to the emergence of very sophisticated interpretative styles handed down by scholars and practitioners alike. We should, however, mention that despite its attractiveness, our interdisciplinary approach can pose a methodological danger for imposing preconceived semiotic considerations on different considerations of interpretation in different approaches. Indeed, a scholar, who is entitled to pursue down further comparative distinction between those different approaches, will ultimately find himself caught in a debate that touches on the disagreements about which approaches explain best interpretation in different contexts. As noted earlier it is imperative that in order to recognize the resemblance between different methods of interpretation and bind them together for purposes of useful discussion, we must access their merits under a magnifying glass of more general hermeneutic, deconstructionist, and semiotic accounts of conflict in law. For this dissertation, it is no small task to bring those accounts together, because in doing so one needs to overcome the obvious discrepancies between different methods of legal interpretation. Proceeding from the theoretical premises of previous sections, we try to distinguish some of the most theoretical underpinnings of traditional legal, phenomenological, hermeneutic and deconstructionist approaches. We then turn to a general characterization of the conflict: the conferment on conflict of the special status does not in itself mean that it is the forestalling of conflict by legislation that establishes

common rules of interpretation. Rather, in our analysis, conflict comes to be viewed as an inevitable product of semio-cultural processes within the legal system.

Chapter 4 includes summaries of five relevant papers written on the topic of thesis (articles are included into the appendix of this thesis). As these articles have been written and/or published over last three years, it would be possible to gain insights from reading these texts into the last phase of evolution of our doctoral research project. Three of those papers have been previously published in peer-reviewed journals and two are accepted for publications. Although all of them are based on the core topics of my doctoral research, it is the value of this dissertation that it brings together all the disparate publications into one coherent whole. The articles have been arranged chronologically based on the date of receipt at publication venues, from the oldest to the newest. Such a sorting logic seems to be very intuitive to the design of our dissertation, allowing the readers to trace the evolution of our research project. The complete overview of included publications will be further discussed in Chapter 4; here we need mention only the mapping of issues. In Article I "Charles Sanders Peirce, A Mastermind of (Legal) Arguments" we tried to apply Peircean semiotics to the evaluation of legal arguments. Article II "On Relationships between The Logic of Law, Legal Positivism and Semiotics of Law" addresses essential issue of mutual relationships between juridical logic, positivist science of law and legal semiotics. Article III ("The Semiotic Model of Legal Reasoning") is (as it follows from the title) a contribution to the development of the semiotic model of legal reasoning. Subsequently, in two last articles (Article IV "The Case of Lauris Kaplinski: A Guide to A Semiotic Reading of Hatred in Modern Criminal Justice", Article V "The Splendors and Miseries of Constitutional Reasoning in Times of Global Crisis") we introduce practical applications of our ideas to the analysis of judicial cases. Finally, in short concluding Chapter 5, the two main areas in which we have done our doctoral research, semiotic critique of jurisprudence and semiotics of legal reasoning, come together when we show how the notion of conflict in legal argumentation can be re-conceptualized as a semiotic device. Here we wish to extend our model of legal argumentation to a larger range of competing semiotic theories, and to answer the following question in a succinct manner: how can theories of argumentation benefit from semiotics? Certainly, we may not able to reduce all activities of legal reasoning to a single semiotic system. But we can characterize the various methods of legal reasoning which claim to be valid, and we can analyse their semiotic inter-relationship. Such an endeavour would refine and advance existing models of legal argumentation in many respects.

2. THE DIFFERENT METHODS OF LEGAL INTERPRETATION AND REASONING

2.1. The Tension Between Different Methods of Interpretation

One of the implications, drawn from the adoption of Jakobson's model of interpretation (Jakobson 1987) as a basis for describing the act of interpretation, is the doubling of factors and functions: for example in law, the tasks of objective and subjective methods of legal interpretation have recently been doubled by assimilating the complexity of current hermeneutics. On the other hand, we might also propose that widely acclaimed textualist and originalist approaches to legal interpretation may be themselves useful in the context of constitutional interpretation, but they are not for interpretation of cases etc. Once again, following Jakobson, we also have to realize that it is the contextual properties of reasoning that matter most (Jakobson 1987: 66–72). One can also expect that the same suggestion holds true for the intentionalist theory of interpretation. This is also important insofar as it holds true for that account of intentional meaning always has the advantage over circular hermeneutic interpretation, which links interpreter and interpreted text, and that actual meaning of a legal text is found in the intention of its author.

From this point of view, one can see interpretation as recognition of the meaning that its author was able to embody using a special kind of unity of materials,[1] and the interpreter of a legal text seeks to engage with the intention of its author. A similar stance on interpretation was taken by Umberto Eco. He proposed two concepts of interpretation: on one hand, to interpret means to consider the 'objective' nature of a text (Eco 1990), its essence, and its independence. Thus, the meaning is determined by analysing external evidence rather than the subjective or internal intention of the author or the contracting parties (compare for example Nerhot's opinion that "the anticipation of meaning that guides our understanding of a text is not an act of subjectivity") (Nerhot 1993: 42). Another concept gives emphasis to the subjective intention of its author and therefore it represents an approach, which was derived from the hermeneutic tradition, in which the text is viewed as something open to infinite 'unlimited interpretation' (Eco 1990: 36). No explicit preferences exist between those two types of approaches: the legislatures, courts, and the legal academies of different countries of the world present considerably divergent views on the issue of the intent of the author in the process of interpretation, especially in the realm of Civil Law. For instance, in the European Union, the courts in the Common Law countries (the UK, Ireland) have voiced a preference for relying on objective manifestations of the parties' intentions (objective method of interpretation); while in other Member States (Germany, Austria, France, Italy) the

[1] Compare, for example, Emilio, Betti. *Teoria generate della interpretazione*. 2 vols. Milan, 1955.

doctrine of the subjective interpretation takes precedence. In passing, we should also mention the more radical doctrine of legal interpretation that was developed by the Scandinavian legal scholar Alf Ross: the latter denied classical distinction between subjective and objective interpretation, because our understanding could vary with the interpretation of data that the recipient of text takes into consideration (Ross 1958). At the same time, a closer look at the state of traditional legal theory reveals that the various techniques of interpretation (used for analysis of legal texts/legal acts) are typically derived from 'interpretivism' that while also rejecting literalist and subjectivist interpretations, assumes simultaneously that the legal interpretation has to unfold the only correct (re)solution of any situation of legal indeterminacy. This idea is best exemplified in Dworkin's most notorious saying: there exists only one correct interpretation. Contrary to Dworkin's position, an opposite current of legal theory of interpretation, – so called 'indeterminism' – maintains that results of legal interpretation are always intrinsically indeterminate: thus, the position of indeterminism is that any particular act of whichever legal interpretation that prevails at a given time amounts to policy-making (Raz 1996) or self-adjudicating referencing to the authority of canon or tradition (Marmor 1996). In this context, crucial variations in interpretation contribute to an increase in their "tension", realized through the variations in the arbitrary relationship between signifying and signified. Therefore to describe the tension would be to analyse the various interpretative operations that are brought into play by special kinds of discourse. The tension between mentioned types of interpretation and normativism also became apparent in the debate concerning the role of narrative coherence in legal argument (Jackson 1990: 417). Considering the function of coherence in interpretation, the followers of strict 'intentionalism' would claim that under the principle of symmetry in legal communication, the main objective of interpretation is to identify the intention of the author (legislature etc.,) or the contracting parties, and thus conflicts should be interpreted narrowly to maintain the coherence of the internalized order (Marmor 2001). Unfortunately, this opinion spawns more problems than solutions: indeed, if a reader interprets a text, then an interpretation generated by a second reader with a different set of interpretative strategies must necessary conflict with the facts as the first reader intended to see them. A new reader creates a new text, which is understood to be a reader-dependent form of the original text, and thus, it would be rather impossible to speculate about the maintaining of coherence in conditions of hermeneutic conflict. This problem has its own practical complications: for example, we could recall some scholars pointed out that a hermeneutic conflict could easily develop into either a constitutional crisis or a crisis of legal ideology, through an encounter with a mutual untranslatability in language, law, and culture that is also an encounter with surprising forms of translation of even such basic European legal concepts such as 'rule of the law' (Hutchings 1999).

In trying to formulate semiotic quintessence of interpretation, we could (following Lotman 1990) argue that it is extracting information and new meanings from the untranslatable that increases the value of information in closed sign

systems. In a closed system of law, the selection of interpretation strategies aims at overcoming the crisis of apparent indeterminacy by subordinating one participant of the indeterminate or conflict situation for another. At the same time, a relatively open system of reasoning wants to sustain the paradoxical structure, since it may act in only one direction only at a time, and since that is all that is possible in any practical sense. In a legal system, which is understood here as a sign system of law it is vitally important to develop the integrating conditions which prevent the legal system from falling apart. In the semiotic conceptualization of law, at least two important questions remain to be answered. To such questions, a reply could be made through Kevelson's ideas: one of them is focused on the structure of paradox, i.e., the basic relationship of meaning that underlies legal praxis, which is regarded here, as a structure of conjoining of the vague and the definite. For our research here, it suffices to say that the model of conflict in legal reasoning advanced by Kevelson has not received due attention in the relevant legal literature. Yet on the other hand, there could not be any doubt that this model would not differ in a significant manner from the model of process by which reason in law is related to the laws of reason: the model confronts us with the violation of the law of identity, and this is the basic paradox examined by Chaim Perelman (Perelman 1965). Perelman tackled the problem by demonstrating that classical paradoxes of reasoning (such as the famous Paradox of the Barber) were compatible with classical strict logic. Perelman claimed that such paradoxes are logically legitimate 'antinomies', being derived from hypotheses that are in turn consistent with hypotheses that are valid in strict logic (critic), which requires alternation. Perelman held that a conflict of norms constitutes an abnormal situation in a system in which the principle of non-contradiction is essential and in which logical coherence constitutes a fundamental requirement (Perelman 1965: 392–395). One could view the methodological manoeuvring with the concept of "antinomy" in the analysis of legal systems as a successful attempt to criticize Kelsen's stance on norm-conflict resolution, by showing that the conflict endangers the logical coherence of the system as a whole. To gain a critical perspective on problems ensuing from the acceptance of antinomy, we could regard antinomy as a final outcome of a power conflict between those who want to control the legal system in order to bring about social ideals and those who still wish to consider legal actors, such as judges, as 'institutions of a spontaneous order' (Kevelson 1981). In this respect, the legal system can promote a greater interaction with other sovereign laws, either by admitting that foreign law shall apply in cases of conflict of laws regulated by private international law – or by tolerating a foreign legal element in its jurisdiction. A good illustrating example of tolerating a foreign element in a legal system is a rule in a foreign system of law, which differs from the rules of public international law in this respect that domestic courts will not usually take judicial notice of this rule, and by virtue of this fact, rules of foreign law generally have the status of facts. It is precisely this awareness of a basic antinomy (pertaining to the nature of legal reasoning in private international law) that lead us toward the solutions of some problems in modern legal

theories/doctrines – the problems, which are perhaps easier to dramatize in the realm of so called 'Conflict of Laws'.

Before proceeding to the discussion of Conflict of Laws, we must to narrow down the scope of terms used therein. According to the narrow formulation, we define the resolution of conflict as a continuous process of settling of conflict situations; this process takes the form of a bilateral negotiation or a bargaining or a judicial dispute setting. The latter requires a persuasive conflict, and in settling of outstanding persuasive conflict, the dispute settler should have to issue a binding decision in the case brought before him. Following Martin Goulding, we accept three main types of dispute settling: 1) adjudication, 2) conciliation and 3) therapeutic integration (Goulding 2001). In adjudication, the settlement must consist of an award to the winning party, which is intended for a formal resolution of the dispute and the recovery of a state of order. The award should also have the character of a binding decision: thus for occurrence of adjudicatory settlement of conflict it must be of a kind that can be settled by making an award. The aim of adjudication is to achieve settlement of disputes by adjustment or compromise between the claims, demands, or interests of parties. It should be stressed here that a normative conflict is not a logical contradiction and cannot even be compared to a contradiction in logical terms. Moreover, unlike a logical system that proves inconsistent to use, the legal system does not become unfit for use because of normative conflict. In the following section, before introducing the theoretical assessment of conflict in legal theories, we are going to sketch some ideas about the practical applications of the concept of *Conflict of Laws*.

2.2. The Doctrine of Conflict of Laws and its Confinements

Although Perelman's concept of antinomy has received an instant and direct application in Conflict of Law, its accurate rendition would require a certain methodological manoeuvre. That is for three apparent reasons. Firstly, the most obvious type of non-unity creating an antinomy in law is the simple conflict between legal provisions between two legal orders. Secondly, conflicts among different legal systems are governed by different rules than are conflicts within one legal system, because the rules developed for intra-systemic conflict do not work well in the context of inter-systemic conflict. Thirdly, add to this the fact that Conflict of Laws is a major conflict that could render the legal systems ineffective and even lead to a failure of the system. In discussing the application of *antinomies* to doctrines of Conflict of Laws, we should be also helpful to keep in mind that Conflict of Laws involves different kinds of choice-of-law procedures and justifications of such choice in a particular instance of Conflict of Laws; it acknowledges the existence of incompatibility between different frames of legal reference between different legal systems. In any choice of applicable law, the deciding judge must resolve the juridical antinomy by choosing one of two possible laws that will justify the judge's decision. The judge has

to justify his/her own choice in order to maintain the appearance of the law as a stable system. Despite the surplus of work done on numerous practical aspects of Conflict of Laws, to our best knowledge no such comprehensive study exists that can fully account for the theoretical complexity of the subject. Unfortunately, our present discussion cannot engage at length with all theoretical issues of Conflict of Laws and with gross simplification, it may be appropriate to focus our attention on those concepts of Conflict of Laws that are of particular significance for our thesis. We take Conflict of Laws as a special theoretic kind of inter-systemic conflict, detached from most of its practical connotations. Simplistically speaking, Conflict of Laws as a legal discipline is of particular significance, for it constitutes *a* branch of the law in each state, country, or other jurisdiction, that determines whether, in dealing with a particular legal situation, its law or a foreign element – the law of some other jurisdiction – should be applied: in simplistic terms, it deals with choice of law, choice of jurisdiction and recognition of foreign law. Thus, we deal with Conflict of Laws when a given conduct is subject to regulations from different legal systems. This statement, together with Kevelson's suggestions, sets the scene for a scientific inquiry into problems of private international law, and the role the concept of conflict plays in legal doctrines. In our own opinion, the main problem here is that there is more than just one route by which Conflict of Laws could be defined in legal theories. For example, the most typical designation of "conflict of laws" is somewhat inappropriate, because the task of this branch of the law is to eliminate differences between two or more systems of law, which make competing claims to govern the issue, which is before the court; to determine the applicable law on the basis of Conflict of Laws rules designed for different areas of law in the abstract, without regard to the content of the substantive law (Knop, Michaels et al. 2008). Strictly speaking, the questions of operation, ascertainment, and review of foreign law are not part of the subject matter of conflict of laws. It is commonly accepted that classical Common Law rules of Conflict of Laws are concerned not only with the competence of a court to hear and determine a case, but also they are concerned with 'choice of law' rules and recognition/reinforcement of judgments rendered by foreign courts. A case is not a conflicts case unless it contains a foreign element: it is primarily only when the question of jurisdiction arises that the problems fall within the area designated as Conflicts of Law (Collier 1987). Here, the question of jurisdiction is the same as a question of applicable law for dispute settling. Furthermore, having to make up for conflict of jurisdictions, the institutions of adjudicating bodies may claim to have exclusive jurisdictions to address the factual aspects of a matter. As mentioned earlier, given the scope of this article we would not be able to provide a precise recapitulation of Conflict of Laws. The features of Conflict of Laws we try to elucidate in this thesis, are related to the focal questions in conflicts of law, i.e., which jurisdiction should hear the case and what substantive legal principles should apply. In this respect, the classical presentation of the Conflict of Laws, made from the state perspective, is being gradually replaced by the presentation made from the perspective of the judge who tries to

'localize' the contract: therefore, it is more appropriate to use the term 'application of foreign law', which better suggests the role of the court in introducing the foreign element (Geeroms 2004).

The discussion makes clear what appears to be a prevailing view on another fundamental goal of Conflict of Laws – which is to advance the interests of private persons rather than those of the state or government. Needless to say that from the perspective of international legal theories private international law has a dualistic character, balancing international consensus with domestic recognition and implementation, as well as balancing sovereign actions of states with those of actors in the private sector. In keeping with the suggestion that we may better understand Conflict of Laws through its dualistic character, one could look at the principle of equality that informs the approach to international relations, taken by other areas of international law. That is, the context must be such as to allow courts to interpret international transactions so as to ensure the effectiveness of private international private law, and avoid conflict by employing the common set of interpretative strategies. However, after incorporating international law as a part of domestic law the original meaning of international norms might have been lost. In this manner, Conflict of Laws in private international law differs from the classic narrow definition of conflict that still prevails in public international law: a conflict in the strict sense of direct incompatibility arises only where a party of the two treaties cannot simultaneously comply with obligations under both treaties.[2]

As is also noted elsewhere, different functional approaches to one of the pervasive problems of conflicts law (choice of law) are usually congruent with different economic models, and also connected to doctrinal attempts to introduce the manipulative doctrines of characterization, *renvoi* and public policy; however, some of those approaches lead as far as to further 'conflicting'' justice by choosing spatially most appropriate law and praising 'party autonomy' (Kegel 1979). Thus Conflict of Law doctrine contributed to the *development* of a forum law rule in that it encourages 'forum-shopping', i.e., a person starting an action might be tempted to choose a forum of venue not because it is the most appropriate forum but because the conflict of law rules that it applies will prompt the application of the law that he or she prefers. For example, by taking advantages of liberal principles of Conflict of Laws and plaintiff-friendly liability laws, American courts attract the attention of foreign litigants due to the expansive acceptance of compensatory and punitive damages (Smith 2012).

From the comparative perspective, we should, however, make explicit the differences in the scope of Conflict of Laws in USA and Europe. First, European jurisprudence widely uses an alternative term - 'private international law'- that is even less accurate and descriptive than Conflict of Laws. Therefore, we must declare that private international law in Europe is the body of conventions, model laws, legal guides, and other documents and instruments that regulate private relationships across national borders between private individuals and

[2] The concept was introduced by Winfried Jenks in 1953, see (Jenks 1953).

corporations, though also with relationships between states and government so far as their relationships are governed by municipal law. In legal theory, international law has traditionally been thought of as a unique discourse system that is bound together by objectivity. However, in international private law, there is a conceptual tension between external and internal perspectives on law: the former locating with reference to a normative system external to the system of the forum. The latter creates choice in the process of interpretation of the forum's own positive law (Brilmayer 1995). Much of the tension in the doctrine discussed herein is credited to difficulties of explaining the legitimacy of the external normative systems. The internalization of commercial transactions and cost of time-consuming transnational legal resolutions of dispute led the market to rely on alternative system seen as capturing the tension between opposing perspectives of private international law. As between member states, European international private law becomes even tighter than ever before, because the principle of mutual recognition widely bars preference of the forum: party autonomy is no longer merely a tool to determine the applicable law but an instrument toward a competition among legal orders; choice of law is not only (perhaps) a right, but also an obligation.

In the United States, Conflict of Law concerns the conflicts between the states of the union and the federal law, meanwhile European doctrine of the conflict of laws, which has been for many years under attack of critics for being merely formalist, has seen many changes. American doctrine of Conflict of Laws is also concerned with issues relating to property and contractual disputes, as they are inextricably tied to intangible aspects of vested rights and more specifically to problems of freedom of contract (such as questions of contractual dispositions etc.). Those issues were classified by Kevelson as semiotic *representations* of the individual rights and demands of the individual persons of nations of the world (Kevelson 1991). The concept of property and the freedom of contract in their intermediate sign-functions are indispensable to the propagating of the new values, ideas into juridical discourse. We could regard freedom of contract as a doctrine emerging as 'sign' of individuals' capacity to make binding agreements. This principle was initially supported by judicial faith in the natural laws of economics and subsequently encapsulated into the Constitution by reading the Fifth and Fourteenth Amendment bars upon deprivation of liberty or property without due process of law to extend to employment contracts. Today, the idea is generally considered redundant being eventually replaced by the state regulation of contracts and reliance-based theories of liability: the goods in a free-bargaining society distributed by the less and less powerful individuals. When the foundations of free bargaining-society were about to change, some legal scholars[3] directed their critique at the sanctity of contract by proclaiming 'the inevitable death of contract' in its classical Common Law form, where a contract was said to come into existence after the accepting of an offer by the recipient.

[3] See, for example Atiyah (1979); Gilmore (1974).

As far as legal doctrine is concerned, the principle of freedom of contract aims to restore the balance of interests of individuals and 'legal persons' – the balance which was being violated and imbalanced by the pragmatic consideration of contractors. Accordingly, American legal realists, who were mainly preoccupied with pragmatic concerns of legal doctrine, argued that one does not have freedom of contract if the economic system created by the state's laws puts one in a situation of vastly unequal bargaining power. It is important to emphasize here that from semiotic perspectives, the concept of 'contract' itself acquires here a clear symbolic function referring to different perspectives on contract – among which we can mention Sir Frederick Pollock's idea of a contract and archaic form of contact. The former refers chiefly to symbolic doctrine of meeting of minds that gained much support in the courts in the 19th century when for the attainment of a contract's purpose, it was requisite that the minds of the parties should meet. The latter would be possible to trace back to archaic forms of semiotic rituals, when parties of contract cut their palms, then held them together to mingle the blood. Given that the symbolic nature of contract appears to be universal, we could also recall Cassirer, who claimed that "the social contract is a symbolic construct, and it is a necessary vehicle of the mind to attain to a specifically human life" (Coskun 2007: 130). Nevertheless, Cassirer and Pollock seemed to distance themselves from the semiotic tendencies by focusing on particular aspects of contract. Another important influence came from Juri Lotman who first expanded the symbolic features of contract into that what he described as one of two basic mechanisms of culture, with another mechanism being a self-commitment/self-giving (which might be as well translated in this context as dispensation, a religious contract). In his article, "'Agreement' and 'Self-Giving' as Archetypical Models of Culture", Lotman made use of essential contrast between a conditional act of 'agreement'/ 'contractual transaction', which lies at foundation of Western European culture and an unconditional act of 'self-giving', which is, Lotman argues, a characteristic feature of Russian cultures.[4] In a significant sense, Lotman's account of contract as an underlying cultural archetype and Cassirer's idea of (social) contract as a symbolic concept, reverberate with features of the modern, rationalized contract law, for the latter is still permeating with symbolic figures of great significance, including even deliberate refutations of logic reasons – such as impossible contracts. On one hand, in his quest beyond the limits of structuralist account of the binary oppositions, Lotman assumed that although there are always two underlying mechanisms of culture, the relationships between them are not opposing but rather complimentary. On the other hand, although some questions related to the concept of conflict come up throughout Lotman's paper, it is surprising that he has never tried to develop a coherent semiotic theory of conflict.

[4] The unreserved 'self-giving' is the model, in Russian culture, for personal relations of the highest type. See Lotman and Uspensky (1984: 125–140).

3. CONFLICT OF LAWS

3.1. The Theoretical Dimensions of Conflict in Law

As we have observed in Chapter 2, the question of Conflict of Law is indeed complex. At the risk of muddling the question further and adding confusion to discussion, we argue that in order to grasp more fully the concept of conflict, we should assume that conflict could be assessed on different levels of legal discourse. This task of assessing different layers of legal discourse is complicated enough for the kind of conflicts that we identify as the most relevant ones. Therefore, in order to deal with different layers of conflict, it is useful to have regard to the theoretical dimensions of conflict. We start with the simplest form, i.e., Conflict of Laws. Conflict of Laws involves different kinds of choice-of-law procedures and justifications of such choice; the problems of conflict in law assume the existence of incompatibility between different frames of legal reference within the same legal system. It is one of the major goals of legal theory to fulfil a particularly important task to distinguish in every legal problem those factors that reflect conflicting values and pick up those values that can be assessed in the objective analysis in legal context. This contextual meaning of value conflict is probably best explained by Lyotard's interpretation of Hegel's rule of the result: it takes an event involving a contradiction, for example a legal 'hard' case that appears to be beyond resolution. In this case, Lyotard claimed, Hegel's rule of the result would be able to do as much justice as possible to the conflict by incorporating it within any future judgments (Lyotard 1988: 97) and narrowing down further the irreducible minimum of conflicting evaluations. However, even after applying this rule to the conflict in laws, a certain degree of incongruence will be inevitably preserved in overarching/overlapping systems of rules, when different rules are constitutive of different type of legally regulated behaviour, such as in the relations between public system of legal rules and regulations of 'private autonomy'. Although regulations of 'private autonomy' might appear to be complex, liberal legal systems private autonomy is generally reached by reducing the influence of public regulations. Habermas was also aware of that problem of incongruence. He claimed, that for conflicts between different types of discourses (such as moral and legal discourses), the resolution of incommensurability is guaranteed by the universal demand of substituting the unity of practical reason with the autonomy of discourses (Habermas 1988). Thus, in theory, a system of moral values in general is expected to be in correspondence with a code of law in which it functions as a point of reference. In practice, most of conflicts in laws are resolved through the reference to the validity and legitimacy of legal norms, to the extent that results depend on decisional texts produced *a posteriori.* For example, the conflict in Estonian contract law is regulated by the rules on legal interpretation of international contracts that were subject to the Vienna Convention on International Sales of

Goods (*CISG*)[5] and – from the European supranational perspective – by the Principles of European Contract law (*PECL*) (Lando and Beale 2000). Even in the case of a mixed legal system in transition there was a clear tendency to subordinate the Estonian rule of law to inter-and supranational legal order of the European Union. At the same time, we can observe that in the case of a heterogeneous system of law, the hierarchy is more difficult to determine since the values are different and often may come into apparent conflict. Therefore, we deem it important that generic notion of conflict in law could be subdivided further into conflict of rules and conflict of principles. The conflict of rules is usually resolved either by amending one of conflicting norms or by invalidating rule by special rules of priority or by using some special rules of systemic interpretation for resolving the conflict. The collision of hierarchically higher rules (principles) are usually resolved by weighting them against each other, because the principles have a hierarchy of weight or importance. Usually, discussions of conflict between rules start with questioning the notion of reason, which is usually understood either as a constitutive (institutional) fact or as an epistemic fact significant for the presence of another fact.

The important difference of principle-based reasoning from rule-based reasoning of principles is that in order to resolve the conflict, the principles have to be weighted by taking the relative weight of each.[6] The same idea is expressed by Robert Alexy, who, in order to reinforce his view, made use of a special weight formula. Alexy maintains that whenever there is a conflict between two legal principles (values), the traditional rules of interpretation do not suffice. Instead, the conflict should be resolved by adopting an elaborated weight formula: the final legal decision is then taken according to what Alexy deems the 'law of conflicting principles' – the circumstances under which one principle takes precedence over another constitute the conditions of a rule which has the same legal consequences as the principle taking precedence (Alexy 2003).

As a side note, we can mention that the plethora of conflicting legal provisions in the Estonian legal system during the transition stage illustrates the pertinence of Alexy's proposal: one such striking example of a logical inconsistency between legal rules was found in Estonian Law of Obligations Act §29 (Interpretation of contract), and this inconsistency was intentionally maintained by legislator for several reasons. Not least among these reasons is that the legal system of Estonia during the last decade of 20th century was in so-called *development or 'transition'*. As noted by Kevelson, trans-discursive relations between two different ideologies brought Peirce's pragmatism into the arena of global conflict where Law plays a double role: Law versus Law (Kevelson 1997). Moreover, like in any transition, this interim period (1991–1999) of tran-

[5] *Official Records of the United Nations Conference on Contracts for the International Sale of Goods*. (United Nations Document A/CONF.97/19; United Nations Sales Publication No. E.81.IV.3) (Text of the Convention also reprinted in *UNCITRAL Yearbook* (*1980*), Vol. XI, part three, I (United Nations Sales Publication No. E.81.V.8)).

[6] See Ronald Dworkin (1978: 22–27) on weighting the principles; Joseph Raz (1979: 22); Peczenik (1996: 297–329).

sition of Estonia from the Soviet republic to the post-Soviet capitalist state was characterized by co-existence of two asymmetrical discourses whose double functions and meanings radically dissociated from each other: the very idea of a supreme binding rule of law deviated from the vision of Soviet jurisprudence (Gräzin 1997). However, the devolution of an idea is not equivalent with its demise but is rather an instance of conflict with possibilities. Under a tide of political utilitarianism, the shift in dominance from the disposed Communist regime to the emergent Baltic capitalist state did feel like more than an expression of the internal and relevant incompatibilities between communist ideology/principle of socialist law and the Western doctrine/principle of rule of law: it was rather a paradoxical situation with two colliding universes of discourse (Kevelson 1997: 1143). The shift from 'the socialist society' to 'the free market', as articulated by semiotics, advances the efforts to understand the political and juridical events (circumstances) in those times.

3.2. Conflict from Phenomenological and Hermeneutic Perspectives

On the practical level of legal reasoning, the conflict of law represents a situation of divergence between various types of underlying interpretative methods, techniques, approaches, and methodological preconditions. Legal scholars circumvent the situation of conflict by elevating one particular type of interpretation to the preceding status at the expense of others in order to promote its particular value. Hence, it has been established that one interpretation can call for a counter-interpretation that provides reasons why there are no legitimate reasons to consider the preceding status of the former interpretation. Thus, we can notice that the competing interpretations are built not in idealized hermeneutic space but in a much messier medium in which conflict results from the processes of interpretation and counter-interpretation. In effect, we are ready to accept that interpretations and counter-interpretations can also be nested into a complex hierarchy, in which interpretations could require additional interpretations that take the form of a conflict resolution and appear as such in their own ways. The strong resistance that traditional methods of interpretation of a linguistic expression encountered in recent discussions is usually attributed to the failure of traditional legal theory to establish the coherent theory of textual interpretation. As we all know, earliest legal theories suffered from the paucity of analytical methodology that prevented an explicit detailed analysis of interpretation in legal context. More recent analytical theories of law took a more radical and expansive stance on problems of interpretation, which has ultimately brought analytical legal theories into the midst of dialogue with phenomenology and hermeneutics.

Given the limitations of paper's scope and space, we should restrict our focus only to the most important aspects of this dialogue. It is necessary first of all to formulate those aspects clearly in some strict terms. There is a widely shared

consensus that phenomenological approach, being applied to legal phenomena, could help us to clarify the structures of legal phenomena in their eidetic purity through the bracketing (in Husserl's terms, phenomenological *epoché*), i.e., the intuitive examination of phenomena as they are originally given to our consciousness (Husserl 1975). The bracketing or transcendental reduction enable us to capture what is directly given and evident to our intuition, for it is precisely intuition that expresses the capacity to know what is directly given and evident, and it is through sensible intuition (*noumenon*) we can reach 'the things themselves'. Husserl's classical phenomenology includes many types of intuition, but only this single one that captures 'invariant general structures', that is, the essences (*Wesen*) of phenomena is important for our purposes, because it enables knowledge and understanding of *a priori* essence of law (Husserl 1975). Although Husserl believed that his method could be applied in all the various sciences, the centrality of (phenomenological) structures in legal discourses was not accompanied by any systemic reflections over phenomenological presuppositions in treating problems encountered in the philosophy of law. It seems likely that the main reason why legal scientists were so reserved in application of Husserl's methods to legal phenomena, is that the object of legal science itself – positive law – is in a constant state of continuous development. So, in bracketing legal phenomena (in other words, in suspending our belief in the actual existence of positive laws), we are actually led back to our intrinsic experiences, which are very difficult to objectify in legal science. The obvious question that arises is how we define those intuited intrinsic experiences of law. What were these experiences of law: the postulates of divine/natural law (*jus gentum*), moral principles, or abstract legal concepts?

With that said we should mention several rigorous attempts to apply phenomenological presuppositions to legal matters, such as hermeneutic studies carried out by Adolph Reinach. Reinach made use of phenomenology in order to reveal the essence or the *a priori* structure of civil law by engaging in descriptions of essential legal concepts, such as the promise, property, representation, lending and liens, which he expressed in a forms of statements (axioms) of a phenomenologically oriented, pure science of law (Reinach 1983). By analysing crucial relationship of civil law – the relationship between the fundamental legal notion of a claim (*Anspruch*) and notion of obligation (*Verbindlichkeit*) – Reinach figured out the only possible source of this relationship would be from associated notion of a promise, which is an universal matter of *a priori* necessity and, just as every promise presupposes that the promisor's will is strategically directed to the course of action contained in the promise. Because promising is an act of will that exists regardless of other human actions, its essence is to create claims and obligations simultaneously and thus, to constitute meaning of positive (civil) law. Reinach aimed at sketching out an alternative to legal formalism and his profound ideas further explicated by Gerhardt Husserl (Edmund Husserl's son), who believed that the bracketing of legal objects is facilitated by the comparative examination of law in different legal cultures (Husserl 1964). Although Gerhardt Husserl gleaned his insights mainly from his father's phe-

nomenological philosophy, some of his theses (for example, historicity of interpretation) were pursued in detail through the tradition of hermeneutics. Following the footsteps of historical jurisprudence, Husserl assumed that every legal system represents a certain phase in history. Since all legal orders have their own history, the phenomenological approach allows for purely synchronic observation in an intra-systemic (*synchronic*) way without referring to universal time; the observation is unencumbered by past, present, and future of the legal system. At the same time, the fundamental legal concepts are part of an abstract intuited time and, therefore, are not synchronic with human actions to which they ascribe legal meaning (Husserl 1964: 32–34).

Given the universality of phenomenological approach, it is not surprising that the application of phenomenology to legal analysis could be an attractive idea. Yet, despite of the persuasiveness of legal phenomenology in comparative legal studies, we should realize that phenomenological approaches to legal phenomena outlined above seem to be less promising for inquiry into more complex legal issues, such as legal reasoning in conflict situations. The unavoidable shortcoming of legal phenomenology is that it is fixed on the description of a priori existing structures, which are not reliant upon the human actions: unfortunately, legal phenomenology does not entail the encounters with the interpretation of human actions, which is deemed to be always reliant upon the position of the interpreter. As mentioned elsewhere, it is interpretation that has always been lawyers' most important task, because in legal discourse the model of communication is reversed: it is not the receiver but the sender who stands in the foreground when the message is interpreted. The model of communication posited by law brings to mind the difference that may be seen between communicational and hermeneutic models. These differences could be succinctly summarized as follows. A communicational model looks at the use made of language (including its 'meaning') from the viewpoint of the *author's intention*; the hermeneutic approach looks at this use from the viewpoint of the *interpreter*. As mentioned in the beginning of our paper, both approaches are employed in law on regular basis, and authorial intention is not necessarily given the primacy in interpretation. On the practical side of the problem, the position and authority of the interpreter are usually of much bigger weight in actual court trials although they are also by no means devoid of theoretical problems. Seen from the theoretical point of view, discursive plan of semiotic production within a dominant discourse of law inevitably seem to offer different discursive subject-(speaking) positions, providing thus a place from where ideologically-charged narratives of law would emerge. This practical observation is especially important when we need to deploy hermeneutic approach to understand legal texts and legal actions. The subjects in legal (or political) process may have been offered powerful or, to the contrary, efficacious subject-positions these in their turn became parts of narrative construction of law (compare the legal status of women in Islamic law; the legal definition of non-combatants etc.).

Everything said before about privileging the speaking position of certain actors applies to practical questions as well. Nevertheless, in our attempt to adapt

hermeneutic methods to analysis of conflict, we are not going to leave phenomenology behind, since hermeneutics and phenomenology are traditionally considered complimentary strands of critical philosophy. The combination of phenomenology and hermeneutics proves to be a vehicle of extending hermeneutic ideas toward domains of legal interpretation. In support to our assumption, we can cite Paul Ricoeur, who argued that phenomenology is the place where modern hermeneutics originates, for it retains from phenomenology the central insight into the intentionality of consciousness and the methodological technique of 'bracketing': the main distinction between phenomenology and modern hermeneutics is that the latter rejects the idealist interpretation that Husserl later gave to phenomenology.[7]

Narrowly defined, hermeneutics has traditionally been regarded as study of meaning, in which the leading idea is to investigate philosophical presuppositions under which every interpretation takes place, it is the study of the methodological principles of interpretation and explanation. Hence, the shift in interest from the interpretation of literary texts to the interpretation of legal texts seems almost natural. It is also used as a technique in Critical Legal Studies: 'the return' to hermeneutics is a touchstone for law for embracing old traditions that provide the invaluable resources available theorists who seek to foster persuasion and understanding and thus it is very important to advocates of Critical Legal Studies because interpretation is central to legal theory. In the following passages, we are going to re-centre the focus of the paper away from the discussion and towards a brief account of historical background of legal hermeneutics, with phenomenological hermeneutics as a central node.

Until the 19th century, hermeneutics was being developed mainly in the form of particular 'theories' formulated in the distinct fields of theology (biblical exegesis), philology, and jurisprudence: it was only due to Schleiermacher and Dilthey that general philosophical (humanistic) hermeneutics arose. Instead of seeing Schleiermacher as a founder of general hermeneutics, we rely on the tradition of seeing him as a mediator who stitched together different hermeneutic traditions providing thus a solid basis on which new hermeneutics of understanding could be grounded. This hermeneutics of understanding, Schleiermacher thought, could be provided if the problem of interpreting speech was treated in a philosophical general manner instead of occasional manners prevalent at that time in forms of specialized hermeneutics: biblical, literary, and legal (Schleiermacher 1998). Each of these specialized hermeneutics itself had a long tradition and was devoted to framing the rules of interpretation pertaining to a specific body of texts. Biblical hermeneutics was devoted to the problems of interpreting the Bible. Literary hermeneutics was devoted to the problems of interpreting Greek and Latin classics. Legal hermeneutics was devoted to the problems of interpreting law, especially Roman law. Schleiermacher was strongly influenced by biblical hermeneutics and literary hermeneutics, and although there are clear resemblances between Schleiermacher's general her-

[7] Further information in Paul Ricoeur (1973, 1974).

meneutics and legal hermeneutics, it is highly unlikely that Schleiermacher was influenced by classical legal hermeneutics. Schleiermacher's hermeneutics is basically an attempt to smooth over obvious acute discrepancies of biblical and literary hermeneutics by shifting focus to the general problem of interpreting speech. As a result of this undertaking, hermeneutics no longer came to denote the art of interpretation only: it is not surprising that Schleiermacher's follower, W. Dilthey, elevated hermeneutics to the highest rank of universal methodology of the humanities, which he called "the methodology of understanding" (Dilthey 1996). This alliance of hermeneutics with other human sciences proved to be a successful recipe for the transformation of hermeneutics – once a theory of interpretation of texts – into 'true science or ontology of understanding' in its generalized form (Heidegger 1962; Gadamer 1993). Despite the growing scepticism about the feasibility and utility of 'universalist' projects, the introduction of ontological and methodological universalism with the phenomenologically oriented hermeneutics of Husserl, Heidegger, Gadamer and Ricoeur, facilitated the reception of hermeneutics in legal theory and it started to play its significant role in theoretical jurisprudence. Thus, it is only in the 20th century that legal hermeneutics became a more specific philosophy of interpretation. Within this philosophy, the problem of understanding received its culmination, and understanding (at least within phenomenologically oriented hermeneutics) is identified or treated as synonymous with interpretation. Indeed, in phenomenological hermeneutics, understanding is a type of cognition, which we would expect to possess an intuitive character. It was, however, Hans-Georg Gadamer, who shifted the focus of interest in hermeneutics from the questions of methodology and epistemology of the human sciences (*Geisteswissenschafien*) to clarification of the ontological foundation of existence. This is so perhaps because one of the primary texts of philosophical hermeneutics, Gadamer's "Truth and Method" (Gadamer 1975), is read in general as providing a link between philosophy and the sciences, and, in particular, it approximates the elements of interpretation to the process of adjudication. In the process of understanding, this type of 'pure' intuition runs counter to another type of intuition that may be described as a 'rational' intuition. It is the latter type of intuition that opens the door to the vast variety of actual ways of understanding and interpreting. According to Gadamer, the only being that can be understood is language (Gadamer 1993: 48). Indeed, our knowledge of the world is possible only through the medium of language; it is through the medium of language we are able to determine the horizons of hermeneutic significances against which we consider objects of indirect cognition. A slightly more important aspect of this hermeneutic approach is related to the notion of the horizon of the interpreter and 'text', which needs not be a written text. These horizons are heavily influenced by tradition. Thus, it would hardly be unusual to suggest that in modern culture, which is heavily influenced by law, law would be an important aspect of one's context or tradition. Finally, in Gadamer's view, language is not only the means through which we experience the world and the tool with which we enter this world, but also an expression of our possession of the word (Gadamer 1992). We shall not

go into the details of this relationship. Rather we shall confine ourselves to observing that everything given to us in the process of understanding (in hermeneutic experience) is given through the medium of language. This conclusion is especially applicable within the context of legal interpretation.

The universalism of language was understood differently and more broadly in that was optimistically called the unified science of understanding. The universal promise of phenomenological hermeneutics was met with a moderate appreciation, since it allows scholars to tackle the fundamental problem of the understanding of individual being (*Dasein*), appealing to intuitive methods that enable one to know the very essence of this being. Such universality could pose a problem to the applied phenomenological hermeneutics of law. In order to underscore the omnipotence of this problem we would refer to an eloquent quote taken from Gregory Leyh's book: "As for the law, hermeneutics does not think of it in terms of the conceptual or methodological interests of the legal theorist, still less in terms of the strategic interests of legal or judicial practice; rather, the concern is with the conditions in which these interests are pursued. A 'hermeneutics of the law' in this respect would not be the same as a theory of the law. On the contrary, hermeneutics is apt to seem a little too wayward or free in its thinking with respect to the law (or indeed any subject). This will certainly appear the case when it comes to the question of law and language, or what in hermeneutics would be called the linguistically (*Sprachlichkei*t) of the law" (Leyh 1992: 27).

Before returning to the discussion of conflict of interpretations, let us first outline other dimensions of the problem, which is as old as the tradition of legal hermeneutics itself. Already the founder of the humanist tradition of legal hermeneutics, German jurist Thibaut was aware of the persisting problem of hierarchical relations between various methods of interpretation (Thibaut and von Buchholtz 1846). However, he saw no problems in that the science of law (jurisprudence) could be influenced by philosophical hermeneutics, which offered the opportunity to solve jurisprudential problems of statute interpretation (such as conflict between different types of interpretation). Thibaut's key assumptions rested on the common feature of interpretation stressed by founders of hermeneutics: the definite rules of the order of priority of the different interpretative viewpoints (types of interpretation) do not exist, and therefore the interpretation becomes an 'art' rather than a science. In Thibaut's view, every legal act is further developed through interpretation by means of law enforcement as a hermeneutic process (Thibaut and von Buchholtz 1846). Whatever will be the ultimate interpretation of this idea, we must keep in mind that Thibaut advanced his idea not in the spirit of dismissing established canons of legal hermeneutics but rather in an attempt to revoke the tradition of limiting objects of hermeneutics to written texts.

In short, in Thibaut's time, traditional hermeneutics of law required a careful re-examination. Whatever did not survive the reformulation of hermeneutics into 'purified' form would have had to be expunged from the body of hermeneutics. When the revision of hermeneutic legacy had been accomplished, it became clear

to Thibaut that he needed to define the relationship between grammatical and other kinds of legal interpretation in the following manner. Grammatical interpretation should be directed solely at the literal sense of a given law. The grammatical canon of interpretation finds its limits only where the meaning of a law cannot be understood from ordinary linguistic usage. At this point, the 'purpose' of the law and the intention of the lawgiver have to be considered ('logical interpretation'). Thus, taking a major step with Etienne-Denis duc du Pasquier's 1847 edition of the interpretation of the Justinian Codex (*'L'interprétation des Institutes de Justinian'*) (Pasquier 1847) and von Savigny's studies on legal interpretation (Savigny 1951) around that same period, the continental doctrine of legal hermeneutics experienced an evolution from a disjointed set of interpretive techniques into a systematic approach. In England, especially during the eighteenth century, the evolution of legal hermeneutics retained its specific Anglo-Saxon distinctions, which opposes it to the continental tradition. To review, the Anglo-Saxon tradition of hermeneutics promoted a deliberate interrelation between legal interpretation and logic. This specificity is attributed, in particular, to influences of Jeremy Bentham and John Austin, following the pattern of what we might call the Whig hermeneutics with its essential emphasis upon political and constitutional development and upon the growth of opposition to royal power. The celebrated and enthusiastic reception of Francis Lieber's '*Legal Hermeneutics in Law and Politics'* aided and abetted the development of a specific Anglo-Saxon tradition of legal hermeneutics.[8] It has been argued that this peculiar pattern of Anglo-Saxon hermeneutics caused the interpretive 'upheaval' in American legal thought. Lieber's 'science' of hermeneutics fitted better the doctrine of legal reasoning originated with Whig jurisprudence. In Lieber's doctrine of hermeneutics, the methodological privilege was granted to the study of legal 'signs'. That is, as early as in 1839, Lieber succeeded to equip the hermeneutics of law with very rudimentary semiotic concept of signs at just about the time of Charles Sanders Peirce's birth. Lieber stated the earliest expression of a semiotic approach to legal discovery and interpretation, stressing the communicative (or, rather semiotic) nature of interpretation required in the defining of signs: "the signs which man uses, the using of which implies intention, for the purpose of conveying ideas or notions to his fellow-creatures, are very various, for instance, gestures, signals, telegraphs, monuments, sculpture of all kinds, pictorial, and hieroglyphic signs" (Lieber 1880: 17).

Jumping ahead of our discussion, it should be noted that Lieber is considered a forerunner to tradition which, in its most forward-reaching concepts, has striven to develop an interdisciplinary theory of argumentation by fusing semiotics, hermeneutics, rhetoric, logic, and analytical jurisprudence in the powerful analysis of legal argument (the final section of paper contains much less elaborated semiotic account of argumentation in conflict situation). In the meantime in Europe, the binding link between Thibaut's methods of legal hermeneutics and the contemporary philosophy was further expounded of von Savigny. Von Sa-

[8] We used 1880' edition of Lieber's work (Lieber 1880).

vigny's seemingly remote musings with theory of interpretation had important long-run influences on legal theories. Just as Lieber's hermeneutics may serve as an example of embracing the semiotic doctrine, we could mitigate von Savigny's blunders in incomplete reception of classical hermeneutics, since von Savigny argued for methodological autonomy of law (Savigny 1951). The crucial point about von Savigny's version of hermeneutics is that von Savigny availed himself of solutions proposed by Schleiermacher, and started with general hermeneutics of law; von Savigny's hermeneutics commenced not with the traditional special case of opaque legal texts but with the understanding of law itself. It is now where a conflict concerning the interpretation cannot occur: at the point where, the rules of priority or hierarchy of methods are not necessary and are, in fact, devoid of practical meaning. With the practical concerns in the background, the lack of explicit rules of priority in von Savigny's account spawned a great deal of justified criticism. As it turns out, not having anything to say about hierarchy of methods, von Savigny's approach is clearly self-refuting on many levels, since it was impossible to decide without referring to a rule of priority which of the four canons of interpretation (objective, genetic, technical, and teleological) should be the decisive one in the event of a conflict. In addition, the highly important teleological element was said to be missing in von Savigny's account, and the process of interpretation remained an arbitrary process. Still, although arguably many questions of hermeneutics raised in the modern studies to the level of important legal debates are still grounded in von Savigny's doctrine, these questions take on non-practical overtones, i.e., metaphysical emphasis.

The imminent presence of hermeneutics on all levels of a lawyer's cognitive activity – in practical, dogmatic, and theoretical discourses – seems ultimately to confirm the hermeneutic claims of universal openness. One could get, at least, approximations to that claim in legal theory by looking at different types of legal discourses. There are (at least) three basic levels of cognition in legal discourses the converging cognitive structures of understanding, interpretation and application of law concern, as a rule, different entities of language (deontic sentences, rules or norms) and different levels of legal discourses. From this perspective, law is seen as a structure all elements of which are, on different levels, parallel to another and thus bears distinctive semantic law. Therefore, the semantic sense of legal concepts is basically a characterization of a given type of discourse. That is, at the level of interpretation, 'the essence of law' is no more than a certain linguistic expression. A starting-point of a lawyer's work is, in principle, a pure linguistic interpretation, since the lawyer has to appeal to a language and different canons of interpretations, which either already exist and are universally accepted and applied in similar cases, or which have to be formulated for the needs of an interpretative case. Secondly, as it is also assumed that discourses of justification pertain to justifying general legal norms *in abstracto* and in light of the consequences, its observance may affect all concerned parties. Finally, discourses of application have a hermeneutic structure related to the justification of concrete judgments by making use of already justified

norms. The universal hermeneutic properties of specialized legal discourses explain why many references to the different hermeneutic theories can be found not only within the philosophy of law, but also within legal dogma. For example, the principle of the hermeneutic circle (that refers to the idea that one's understanding of the text as a whole is established by reference to the individual parts and one's understanding of each individual part by reference to the whole) underlies the principle of systematic interpretation in law. Exactly the same hermeneutic circle is used in hermeneutic account of the processes of concretization and actualization of legal norms. Operating at the pragmatic level of legal discourses, legal hermeneutics becomes associated with "the hermeneutics of institutionalized situations of a dispute on conformity, i.e., a dispute about semantic 'synharmonization' between legal rules, or between legal rules and legally qualifiable fact" (Sharankova 2000: 40). Other particular elements of legal discourse (claims and facts) must be prepared in such a way that makes it possible to subsume the particular under universal norm (norm-application) in a form that is also not so different from Schleiermacher's hermeneutic circle. This means that in any process of understanding the parts (typified behaviour, intent, and other elements of crime) must be understood in relation to the whole, just as the whole can only be understood in relation to its parts, in Schleiermacher's words: "complete knowledge always involves an apparent circle, such that each part can be understood only out of the whole to which it belongs, and vice versa, all knowledge which is scientific must be constructed in this way" (Schleiermacher 1986: 84). Each such circle of reasoning points backward to different modes of interpretation (historical, grammatical, etc.,) that requires knowledge of pertinent grammatical rules or general history.

A charitable interpretation of modern doctrines of legal hermeneutics may include one important point that we may have already encountered in practical jurisprudence. Namely, a legal case alone does not have any complete meaning for the legal purposes: their meaning is the result of their entering into a relationship of reciprocal correspondence. Nevertheless, implementing hermeneutic methods frequently bring about judicial activism which maintains that the content of law is created by courts when they interpret certain provisions, for example in criminal law, criminal liability should be set up every time in a concrete criminal provision. In 1968 Winfried Hassemer, a German legal scholar, carried out a notorious attempt of applying hermeneutics to the concerns of criminal law by offering the model of hermeneutic circle as the foothold to a model of adjudication in criminal trial (Hassemer 1968, 1986). The model proposed by Hassemer immediately called for a huge dosage of critical responses accusing Hassemer in violating the basic principle of criminal law (*nullum crimen nullum poena sine lege scripta*) by allowing the judicial elements of law-making in criminal law. Another example of hermeneutic application may be discovered in discourses of adjudication in criminal law, in which analysis of offence follows hermeneutic spirals: from the elements of an offence to facts, from elements of an offence to the general conditions of liability, and from the general conditions of liability to fact (Tapani 2009: 137).

Nevertheless, before continuing with the description of legal hermeneutics proper, we wish to go back to Gadamer's typology of hermeneutic approaches. Although Gadamer differentiated between several types of hermeneutics, he maintains that the problem of understanding and interpretation involves *Anwendung*, application. Just as the judiciary, when interpreting the law, applies the text of the law and the text of legal histories to a specific case, whereby adjudication takes place, the reader of a text applies the text to his or her specific situation. In fact, Gadamer goes even further by claiming that interpretation only takes place in the act of application. Putting it in other words, one can say that without application, there is no interpretation. In other words: in legal decision-making, the judge constructs a new virtual reference to the legal text in the world of actual litigation. Before that, the legal text only had a sense, that is, internal relations or semiotic structure. A given verdict states that it is acceptable with a particular legal tradition to interpret a text of law as if it was referring to the case at hand. A proper account of legal decision-making needs, besides the synchronic view of the structure of legal texts, an analysis of the diachronic aspect (actualization of semiotic structure), through which it is possible to understand what is taking place in adjudication/application or in the legal world on the whole.

In legal discourse, the conflict of interpretations is usually constrained by outer limits of presuppositions. As a rule, the greater the closure of such constrains the wider range of competing interpretations will incorporate different variants of the competing readings in themselves. It is time now to reiterate that, as said earlier, von Savigny's classical hermeneutics was not constrained by strict rules of priority for interpretation in case of conflict. As we have shown above, in the absence of rules for interpretation in the system of law, a doctrinal interpretation allows the judge to engage with judicial activism and to make decisions by employing a kind of free legislative and law-creative activity. On the other hand, the strategy of judicial interpretation rests upon the principle of *omnia sunt interpretanda* – the principle that becomes a manifestation of a new dimension of judicial independence, namely a manifestation of independent authority over the meaning of legal text. We should also keep in mind that classical general hermeneutics being applied to the reading of legal texts will certainly retain some demarcation or 'liminal space' or 'fundamental gap' between intention and literal meaning, or between sentence meaning and speaker's meaning, allowing judges to take in consideration highly problematic linguistic phenomena such as possible ambiguity of legal clause. Thus, although expectedly centred on the problem of proper understanding, Gadamer's hermeneutics reject the reductionism of intentionalists by holding that it is not prescriptive that original intention of legislator is only one correct interpretation. For example, in the Anglo-American legal systems, the precedents can be overruled if these precedents should come to be so clearly outdated that the state of Common Law at the time of precedents should have no more bearing. We can recall in this connection the famous hermeneutic maxim, which says that, in case of conflicts of interpretation, "the wider context decides" (Gadamer 1975: 272).

Particular elements are better interpreted as parts of a whole, and the better explanation will be the one that includes more coherent elements within the projection of the meaning of the whole. Moreover, in contrast to the old popular 'intentionalist' theories of legal interpretation, phenomenological hermeneutics maintains that hermeneutic 'consciousness' is itself that mode of being that is conscious of its own historical "being effected" (Gadamer 1992: 276). Any interpretations of the past, being based upon interpreters' own prejudices and controlled by their own preconceptions, is as much a creature of the interpreters' own time and place as the phenomenon under investigation was of its own period in history. This is a perfect example of what is known as the historicity of understanding. Gadamer claimed that the process of understanding has not only a linguistic but also a historical context. Another important feature of Gadamer's hermeneutics is its model of communication. In this model, every conversation creates a common language. This idea of a 'common language', generally characterized by Gadamer as a fusion of horizons (Gadamer 1992), is often misunderstood as a consensus. However, the 'fusion of horizons' (*Horizontverschmelzung*) is not two people becoming one through the intersubjective elimination of difference. Instead, it is a dialectical play (dialogue) between one's own horizon (understanding) and the horizon of the text (Other) one is trying to find a common ground, and thereby reaches a new understanding of the subject matter (*die Sache*) (Gadamer 1975: 269). This conclusion puts Gadamer into the company of the dialogical ideas of Bakhtin and his circle. Here, the underlying hermeneutic expectation is that the fixed verbal structure from the past is open into its future with regard to its topic or reference.

It is obvious that the denial of historical context inevitably leads to the problem of anachronistic interpretations of the past (as it was in the case of the earlier doctrine of *stare decisis* in the common-law system). The solution to this problem was already justified by von Savigny's canon of historical (genetic) interpretation of law that defined the historical element in interpretation exclusively as regard for the condition of the legal rules referring to the point in question at the time when the statute to be interpreted was adopted. Even now, when in many modern legal theories the preparatory works and the circumstances of the treaty's conclusion have come to be viewed only supplementary means of interpretation, the recourse to the so-called *travaux préparatoires* plays an important role for the interpretation of international conventions.

Anticipating the possible objections to the universality of hermeneutic approach, it must be clarified that ostensible universality cannot provide reliable solutions to all problems of legal interpretations. Therefore, an additional layer of certain constraints imposed on hermeneutics' application is highly desirable. One such a constraint stems from the field of text semantics, which holds as granted that a vague clause could be described as having at the same time two or even more different 'meanings', and it is very possible that none of them is so called 'intended' meaning (Iser 2000: 5–6). The last observation points to the fact that a strictly understood linguistic interpretation could only solve some of minor legal problems, which concern an explanation of ambiguity, or a vague

clause sentence preceding the question of law or deciding which meaning is intended one. The ambiguity in law presents a serious problem, because in case of ambiguity more than one interpretation is possible. Sometimes, in ambiguous cases the 'legal' issues may be interpreted by appealing to rhetorical categories. In the case of *scriptum et voluntas*, there are two different stories about the creation of the same text. The second one (*contrariae leges*) describes a contradiction concerning the relation (correspondence) of the 'facts'-narrative to two competing narratives (in different texts). In the first case of *ambiguitas*, the same contradiction emerges between two readings of two equally plausible narratives based on the same text. The divergent points in interpretation could be efficiently handled with help of the rhetorical category of *collectio* that refers to the contradiction about the possibility of the correspondence of the 'facts' to any legal text (Kathy 2005). The familiar opposition between *scriptum* and *voluntas,* where the fundamental legal discrepancy is between intention and action might be also extended to legal actions.

Another problem is intrinsically related to the topic of authorial intention in legal texts, when the author's intention appears to be subverted by the referential structure: "whether we speak of the framers' intention or legislative intent, a legal text defies any monolithic reading" (Milovanovic 1992: 119). To be sure, the generalization of meaning in legal discourses is far from being a simple hermeneutic model. This matter, in its turn, offers substantive weight to deliberate constructivism, in which interpretation provided by any legal subject is as good as original meaning invested into legal text by its author(s). Deliberate constructivism asserts that when we are in the process of interpreting the prior object, besides the prior object and its interpretation there is a third object the interpretation brings into existence. The contention between law and its interpretation is illustrated by clarifying the relation between intention and action, and the use of a fictional tool for assessing intention in the mind of the accused in order to establish intent and link it to a specific action. In contrast to intentionalism, constructivism also takes for granted that in discursive practices the ways in which legal meanings are generated, really do matter. In theory, legal discourse of court trials can be represented as proceeding from a mutual interdependence between legislative discourse consisting of performative, normative rules, and a referential ideological discourse. This nuanced model could be accepted but with certain reservations, for it only partly succeeds in showing how legal discourse of trial is reliant on participants' commitment to hermeneutic 'readings' of author's intention.

In reality, legal trials are fought not only with regard to facts, but also with regard to words (questions of law and their interpretations): the issue is not only if certain behaviour happened (a fact), but also if that behaviour is illegal, if the law prohibits it. Thus, in a court of law, unconstrained conflict is transformed into the assault of words. The parties in litigation are interested not as much in understanding what the legislator ('the author') really wanted to say, but in winning the case by using specific rhetorical and linguistic skills. Thus, one must accept that in legal reality, certain normative constraints on hermeneutic

rules and canons of interpretation are necessary for making sense of law. A theory of interpretation should preserve. In other words, besides the constraints imposed by legal actors on situation they wished to address, there are also constraints that impose themselves on actors without concern for what actors meant. We need to devote more attention to those constraints on hermeneutic practice of constructivist readings of law designed to ensure the stability that differentiate legal and moral reasoning (Goodrich 1996; Perelman, 1980). In this context, we could describe hermeneutic rules or canons as instruments of attaining certain goal that aims not at directing the will of the receivers, but at indicating to them that their will is conditioned (Poggi 2011). For example, François Gény goes on to say that the main acknowledged constraint on the interpreter is the written law, and this exerts the primary authoritative source when it exists: "statute as such is the expression of the authority of a man or a group of men, commensurate with their intelligence" (Gény 1963: 565). In other words, even though a statute carries forward the intention of its authors, and the situations which it was presumed to govern (and therefore no statute becomes an independent entity separate from the thought of its author), the process of legal hermeneutics must be regarded as a continuation of an idea, a human thought, a question, posed in the form of a statement, or indication, by the expresser to a respondent. So the measure of a written law or rule is not an abstract one, but whether it succeeds as communication in the context in which it operates. There will always be an irreducible element of ambiguity in any communication, arising from both the inherent ambiguity of words and grammar and the inability to make general statements in advance that will always be applicable to every possible combination of facts that might arise. That is why every legal system has a significant amount of arbitrary rules (Kelsen 1967), let alone frames of interpretations, which are applicable to cases of ambiguities (Jackson 1985: 267). Any interpretation that violates those rules is no longer deemed to be a legally valid interpretation in a court of law. The hope of the lawgiver is that the law-applying body is well aware of those rules and uses them to best advantage in communication: for the scope of our analysis it is sufficient to say that some of those rules of interpretation are to various extent recognized, formalized and even stipulated *expressis verbis* in the international treaties throughout the world.

For example, in order to avoid the international repercussions and to ensure the efficiency of international law it is advised to implement recommended methodology of interpretation proposed in the Vienna Convention of 1986 Article 31, § 1 of the Vienna Convention stipulates that „a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".[9] Only when the proposed method leads to ambiguous results, we can have recourse to

[9] 1986 *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations.*1968 VCLT-IO.25 ILM 543 (1986) / Doc. A/CONF.129/15.21 March 1986, Vienna

supplementary means of interpretation. On the other hand, the CJEU (EU Court of Justice) has never explicitly referred to the Vienna Convention, and it is generally assumed that the CJEU employs the textual method of interpretation[10]; however, the open-ended nature of EU law allows disregarding the textual wordings by accepting teleological and contextual interpretations. It appears probable that interpretation methods of jurisprudence are prone to indulging in same naïve hermeneutic assumptions. The authors of so called 'rules of interpretation', unlike hermeneutics, attempt to draw a clear hierarchy of interpretative methods, but in doing so they disregard the difference between the empirical reading process and the surprises of text as meaning of any particular text is theoretically inexhaustible. We may observe at this point that the thrust of rules of interpretation is paralyzed when it comes to the question of multiple meaning of the same text. The kind of hermeneutic approach favoured in international law is not a comprehensive perspective that embraces all the interpretative approaches, but rather a very definite and limited activity, which privileges univocal meanings of legal texts. Far from discussing whether hermeneutic canon of interpretations and legal rules of interpretations are obscure, dogmatic or problematic, we are going to confront them with the fundamental thesis of Derrida's deconstruction with which we ultimately will embark on a critique of hermeneutic theories. In our treatment of conflict, deconstruction proves to be more promising, since it explicitly connects *'different'* (difference) to *'differend'* (conflict) (Fleerackers 2008: 28).

3.3. The Concept of Conflict in the Project of Deconstruction

Although hermeneutics and deconstruction share much in common, juridical nihilism, so noticeable in different 'deconstructive' renditions of jurisprudence (most notably, in Critical Legal Studies) offers a counter approach to the deliberate constructivism of hermeneutics. While hermeneutics asserts that the essence of hermeneutic approach is exemplified by legal theories of interpretation, deconstruction aims at denouncing and deconstructing those concepts in its attempts to emancipate meaning that the legal methods have silenced (Goodrich 1990). The crux of difference between those two currents of thought is that hermeneutics celebrate values of truth and meaning, while deconstruction refutes them as metaphysical entities. Providing interesting insights into the process of legal interpretation and the issues of conflict *in* law, deconstruction debilitated the tenets of formalism in legal theory and subsequently gained currency in the modern jurisprudence. More important is that the deconstructive jurisprudence, with its inherent nihilistic tendencies, implies that it is always necessary to dissolve law into a variety of readings pertaining to relations between individuals, who engage in legal discourse, participate in the discovery of the

[10] See discussion in Senden (2011).

multiplicity of juridical thought. Another major conclusion of deconstructive jurisprudence is that in discursive structures of law truth-claims would emerge as provisional claims. Given that conclusion, it is very appropriate to introduce the concept of 'infinite deferral' or 'infinite drift' of meanings, which goes hand in hand with disassembling of text (Derrida 1978: 268). Derrida's theory entails strong anti-formalist appraisal by claiming that construction of meaning in law and its evaluation are essentially devoid of foundation and the legal text has no stable meaning. The task of deconstruction is to show not that texts are necessarily meaningless, but that they are open to multiple conflicting meanings. This characteristic assumption of discourse can be succinctly restated for specific legal texts: when reading legal texts one may enthuse about the rich hermeneutic potential of legal texts, it is because they leave meaning radically open rather than because they close it down prematurely. Since the tension between hermeneutics and deconstruction is un-decidable, the reader retains a commanding position in the process of interpretation despite the author's assumptions of hermeneutic control because it is the reader who is called upon and implored to approve the author's own interpretation. A text is an iterating object and can be repeated, so its meaning can be argued. Far from providing means of fixing meaning, deconstructive reading ensures that meaning is produced, in process, but never stable or unitary. In this conception, interpretation is a project, which can never be completed. Here, deconstruction echoes the message of philosophical hermeneutics: "seeking new teachings, hermeneutics incessantly returns towards verses which have already been interpreted, but which are inexhaustible" (Lévinas 1982: 7).

Let us proceed with discussing the concept of meaning in deconstruction: deconstruction assumes that whatever closure is reached in legal interpretation, it is due to something outside the text, because it is not an original meaning which is vested in a text, but rather a reminiscent of meaning we are able to trace. It should be mentioned that the position held by followers of deconstruction has received justified criticism. Derrida's position is the main target of Eco's criticism (Eco 1990: 35–36) when he writes that certain 'modern interpretive theories of deconstruction' have gone too far in allowing the reader to blur *intentio operis* granting interpreter with unconstrained opportunity to reflect upon a text (Eco 1990: 36). The interpretative resources are limited and the limits of interpretation are articulated by intervention of common sense and refined restatements of semiotic concepts, like Peircean concept of unlimited *semiosis*. Even if semiotics permits the establishment of theoretically unlimited modes of interpretation, the movement among them must obey the congruent conditions of interpretative economy. In order to comply with the demands of interpretative economy, the perfect hermeneutic act must realign three different types of intention – the intention of author, that one of the text and that one of the reader. Eco's criticism is justified when we deal with relatively autonomous sphere of linguistic production in the juridical structure. In this respect, deconstruction is clearly at variance with the real legal practice. Another aspect of criticism is also expected. Rather than seeing the construction of meaning in law

as ‘an infinite drift of meanings’, the legal practice (especially that one of higher courts) binds specific legal meaning to signifiers and transforms elements with ‘floating connotations’ of natural language into the elements of legal discourse not only bearing a specific fixed legal *monosemic* meaning, but also capable of producing it. To a surprising degree this conception has become widespread in Greimas’ version of legal semiotics, where law is seen as a form of symbolic power of naming that constitute the *monosemic* legal objects, the constitution of such semiotic objects is accomplished either through the constitutive act of naming objects in legislative discourse or through the ascribing the precise (more static and decontextualized) meaning to them by the higher courts. There is also a difference between sense relations within legal discourse and those that exist in ordinary language. Although ordinary language includes marked binary oppositions, whose marked term (according to the context) might or might not include unmarked term (‘man’ may be used to include ‘woman’), in the legal lexicon the use of marked oppositions with such ‘inclusionary’ meanings is so highly discouraged that “the adoption of such ‘inclusionary meanings’ within the legal lexicon was thought to require statutory enactment” (Jackson 1995: 25). It is not surprising that this semiotic manoeuvre leads Jackson from asserting the total lack of fixed meaning in binary oppositions to the equally shocking claim of asserting the total hegemony of the author (the legislator) over legal text.

Without downplaying the peculiarities of legal discourses we may argue that under certain circumstances the deployment of deconstructive practice in law could pay off. Let us suppose, that there are many marked binary oppositions in legal discourse. Then, sooner or later, we’ll have to deal with an instance of reversal of categories in binary oppositions by revealing the implied tension in reversal of categories of binary oppositions; one can bring forth the vision of moral and legal obligation which is entirely different from that one of legal dogmatic. The implications of Derrida’s theory of interpretation which goes beyond the traditional hermeneutic canons and semantic theories can be also extended to constitutional interpretation. Indeed, in constitutional interpretation, deconstructive method of interpretation would have undisputable advantages over more conventional hermeneutic and semantic methods for one obvious reason. Interpretation which is deprived of deconstructive elements tends to ignore or even neutralize law’s antinomies and makes of constitutional interpretation simply a circular and self-legitimating practice that seeks to avoid a conflict. Drawing on our considerations of deconstruction, we could assert that the deconstructionist interpretation of constitution is somewhat different for it is mainly concerned with the dissemination of the constitution by tracing the repetitive references of constitution to other textual events and to other texts (such as international treaties etc.). Deconstructive interpretation aspires to transcend the image of constitution as a closed system. The process of tracing references of repetition beyond the constitution is the continuous process of recovery of hidden legal meanings. In the wake of Derrida, we would say that the tracing of the repetition takes place in on those zones in the text of metaphysics where

difference's movement from appearance to disappearance is most readily discernible, signifies that this thought has a further sense beyond that of a bare negation of any form of presence of the origin. What a concept of trace of constitution means for deconstructionists, quite simply, is that every sign refers to all the signs from which it is differentiable.

With all possible cautions, we could assert that the examined process of deconstruction (or rather, revealing *difference* in Derrida's terminology), which shows the determination of Being as Presence (Derrida 1982: 21) serves in law a specific purpose enabling the 'silenced others' to tell their 'tale'. One of the essential turns which deconstruction takes here is that it explains how law reflects social visions by privileging of particular conceptions of human nature or particular human groups. When one attempts to deconstruct legal principles, one can find oneself in the odd position of having to articulate the ideological reasoning that involves privileging of certain groups (Balkin 1987). In our view, this fascinating and challenging observation needs to be set in a proper perspective and clarified by using a practical example. For the purposes of evaluation, we are going to offer a fine deconstructionist reading of a famous case taken from the judicial practice of The Federal Constitutional Court of Germany. In 1968, The Federal Constitutional Court of Germany affirmed the possibility of revoking the legal validity of Nazi legal provisions, if they were violating the fundamental concepts of law. From the deconstructionist perspective, in such cases of violating the principles of natural law, the revocation of Nazi legal provisions by Constitutional Court signalled a specific way of expressing a *differend* (conflict) between requirements of natural law and provisions of positive law that cannot be accepted according to natural law. Here, the *differend* is understood as a case of a conflict between two parties, which cannot be equitably resolved for lack of a rule of judgment applicable to both arguments; in such a case it is important to note how the resolution takes place (Lyotard 1988). At first sight, Lyotard's explanation of *differend* appears to be a misty one. For Lyotard, it is evident that illusionary 'resolution' of the conflict between two incommensurable languages in terms of judgments, is written in the idiolect of one of the parties while the wrong suffered by the other is not signified in that idiolect. In principle, it is impossible to avoid conflicts, because *differend* is signalled by the inability to be heard. The one who lodges a complaint is heard, but the one who is a victim and who is, perhaps, the same one, is reduced to silence (Lyotard 1988: 10). Another related problem here is that in legal communication of *differend*, where both the addresser of norms and the addressee are the same persons belonging to the same group. Indeed, by surveying the legal establishment's accommodation and application of discriminatory laws in Nazi Germany, we can observe that Nazis made laws without reference to anyone except themselves.

A more radical deconstructionist account of law's binary oppositions has been offered by Paul de Man (de Man 1986). De Man shares with Derrida a tendency to operate on a level of interpretation which does not exclude either the determinacy of literal meaning or that of authorial intention. What allows

the legal text to proliferate is that a legal text appears to contain tensions within its structure, such as negating of the individuality of rights or marking the indifference of legal text with regard to its referential meaning (Necati 1997). With a growing rejection of the assumptions underpinning formalist theories of meaning, the problem of settled meaning is increasingly perceived from many angles: some scholars deny the very existence of the genuine literal meaning, which they equated with the combination of the semic cores of the words used in the utterance (Searle 1979, Wilensky 1989). They argue that the literal meaning of a sentence is the meaning which the speaker attributes to a sentence in a normal situation. Taking this argument to a logical extreme, we would claim that the interpretative determinacy of literal meaning is the linchpin of a linguistically based model created by legal philosopher Hart. Accepting the inability of positivism (especially that one of Austin's speech acts) to break the semiotic code of legal discourse, Hart refuted a classical version of legal positivism by suggesting that legal communication is possible when the communicated legal concepts have a semantic hard core of settled meaning of standard instances, where there is no doubt about the meaning of words, surrounded by the 'penumbra of uncertainty' (Hart 1961: 12). Disagreements usually do arise in the penumbral area, but even these disagreements must themselves have a point of reference given by the settled meaning. So much for this type of the settled meaning, which requires a hearer to make recourse to extra-linguistic experience; the latter, in its own turn, must be presented in such a way as to be intelligible to a hearer. In order to reach an interpretation, hearers would need to delve into semantic distinctions that conflate under the very general terms of 'legal' and 'vernacular' meanings of legal concepts. Hence, Hart's theory of legal meanings appears to be consentient with traditional hermeneutics at most of its critical moments. But more importantly for our present purposes, the widespread acceptance of Hart's "hard core of the settled meanings" raised the interest in Aristotle's rhetoric (topics) - Aristotelian classical notion of *endoxa* (an argument from common beliefs, the common sense opinions, the conceptions of general public), which is coming here to be viewed as something similar to rhetorical *topoi*. As such, the topic of *endoxa* has a tremendous relevance in our discussion of literal meaning, as the literal meaning of a sentence only has application relative to a set of contextual or background assumptions (Aristotle's *doxa*, an opinion upon which many in broad accord within a given context), improving thereby the reliability of interpretation. This conclusion was accepted even by Searle, who, as a rule, rejects equating 'literal meaning' with 'zero or null context: "for a large class of sentences there is no such thing as the zero or null context for the interpretation of sentences**,** and that as far as our semantic competence is concerned we understand the meaning of such sentences only against a set of background assumptions about the contexts in which the sentence could be appropriately uttered" (Searle 1961: 207). However, one could claim that the very existence of 'commonly accepted set of assumptions' is highly problematic, because the frequent juxtaposition of text and 'common assumptions' related to a partic-

ular discourse enormously contributes to different layers of meaning, and no shared opinions exist in the social setting, where legal discourse takes place.

Still, in spite of the apparent terminological difficulties, legal canons of interpretation constantly make reference to the concept of literal meaning, and so do legal judgments. The plain meaning rules says that if the meaning of a legislative text is plain, the court may not interpret it but must simply apply it as written. Given that the resources of interpretation in judicial cases are usually limited, it is only when there is an ambiguity in a text; the court may appeal to the rules and techniques of interpretation. The rule itself is rather simplistic, because there is no clearly articulated distinction between a plain text and a text whose meaning is not plain: no text is plain until it is interpreted. However, a plain meaning approach will not extend to very debate just as it will not depend on a fixed translation of hermeneutic principles of the plain meaning in historical context. The seemingly simplistic method in its most commonly stated form holds that when there is a conflict between 'what is said' in the written instrument and what is intended, judges tend to base their decision on the literal meaning, which is understood as the grammatical and ordinary sense of the word. However one may ask how the plain/the literal meaning are established in legal discourses. The most common tactic that courts employ when having difficulties with establishing of the literal meaning of an ordinary word is to consult a dictionary (for example, Black's *Law Dictionary*). The solution is far from perfection: it is clear that dictionaries may contain misleading information that even technical dictionaries that have misleading information and by virtue of this fact this sorts of plain and ordinary meaning based on a dictionary may well be refuted or even misused for particular rhetorical or ideological reasons. A particular reading of the rule can be presented as the accepted standard reading, although other interpretations of the rule are possible from a legal point of view and the plain/literal meaning rule can be used as a tool of manipulation.

4. SUMMARIES OF PUBLISHED ARTICLES

4.1. Charles Sanders Peirce, a Mastermind of (Legal) Arguments [Article I]

The similarity in the patterns of inquiry between legal argumentation and semiotics raises the question of how we explain it. Someone might be tempted to posit an existence of a sort of universal methodology, but it is more productive to explain the similarity as a result of sharing the same universal epistemological and phenomenological perspectives between the process of legal reasoning and semiotic inquiry. The article is inspired by Peirce's idea that all reasoning must be necessarily in signs: every act of reasoning/ argumentation/scientific inquiry is a sign process, leading to 'the growth of knowledge'. In this article, we illustrated the universal nature of law by phenomenologically considering semiotic constituents (phenomenological modes of Quality, Object and General Regularity) of the most fundamental and generic type of sign – Argument. The starting-point in application of Peirce's ideas to legal argumentation is the universalizing nature of some fundamental rules of practical discourse, in our case, fundamental rules of legal reasoning. The recovery of the universalizing semiotic nature of legal reasoning disguised beneath the surface of scientific and political interpretation of law opens an astonishing new perspectives for legal semioticians eager to explore the methods of legal argumnetation. It does not necessarily change the traditional rules of reasoning. What it changes is the pattern of understanding and the focus of our attention, which shifts inexorably towards a study of sign processes in legal reasoning. This is the approach that highlights the presence of the unavoidable element of Speculative Grammar conjoing juridical logic and the rhetorics of law within the process of the evolution of legal thought and the growth of legal knowledge.

The relevance of this approach to jurisprudence is less obvious, since very few approaches deriving from semiotics could ever be directly testable in a legal context. Nevertheless, in our analysis we have drawn special attention to the limitations of traditional expanatory models of legal argumentation. The main weakness of those approaches is thar they are still strongly affected by either the dialectical (logical) perspective or the rhetorical perspective on argumentation. By complementing traditional models of legal argumentation with Peirce's approach, it allowed us to conduct a better synthesis of rhetorical and methodological aspects of legal reasoning.

4.2. On Relationships Between the Logic of Law, Legal Positivism and Semiotics of Law [Article II]

While the previous article has already touched upon the topic of realtionships between logic of law, science of positive law and legal semiotics, the second article tackles the question of reciprocal relationships between the logic of law, positive law, and legal semiotics. During the 1970's and 1980's, in observing the backwardness of legal positivism in explaining the evolution of society, legal theory saw a progressive increase in the number of perspectives aimed at understanding law. Still, the topic of relationships between logic, science of positive law and semiotics has been a troublesome one, being an object of much philosophical debate in the last century. Because of the complexity of the discussed topic, in our second article we didn't pursue a goal of providing a comprehensive account of different theoretical perspectives within the modern jurisprudence. Instead, our analysis was committed to another idea that crucial aspects of positivist science of law, logical studies of law and legal semiotics can be effectively addressed in a comparative manner designed to trace the similarities or the differences between these paradigms of legal research. Thus, the aim of this paper was to detect traces of methodological differences and similarities between logic, positivism and semiotics. The differences/similarities in the approaches worked themselves out in terms of differences/similarities in the way these approaches understand law itself. At the center of logical analysis is the proof of logical connections between the norms of law. For scholars of the positivist science of law, who in this regard follow philosophical positivism, the concept of law is presented only as a layer of meta-language that separates law from politics. And, however, we should not leave the topic of relationships between logic, positive science of law and semiotics without mentioning the interesting speculation of Bernard S. Jackson, according to whom (Jackson 1990), legal semiotics is 1) a radical criticism of legal positivism, even if it still privileges the essentialist view of language, and 2) able to mediate critically between legal realism and legal positivism by clarifying the interrelations between sense and meaning.

In our opinion, the main conclusion of this article is that the limits of legal semiotics are always relational to law, and its object of inquiry could only be defined in relation to legal positivism and logical studies of law. Secondly, we argued for a proper position for legal semiotics in between legal positivism and legal logic: the differences between legal positivism, legal logic and legal semiotics are best captured in the issue of referent.

4.3. The Semiotic Model of Legal Reasoning [Article III]

In our third article, another entry into the issue of reciprocal connections of the science of posittive law with legal logic and semiotics brings us to grips wth the very complicated topic of legal argumentation. Though the field of 'legal argumentation ' is not as crowded as those fields that deal with other aspects of practical legal discourse, it has attracted more and more interest over the last years. The focus of this paper is on semiotic models of legal argumentation and legal discourse. Whether or not a particular model of legal reasoning can be spelled out so as to handle difficulties, we assumed that any adequate theory of legal reasoning would have to tackle what virtually all say is the problem - that many argumentation theories describe models which are characterized by abstract rules of argumentation rather than laying out a credible acccount of how arguments are constructed. Hence, rather than repeating thorough literature reviews that have appeared elsewhere, we proceeded from the theoretical framework for a semiotic theory of legal argumentation first introduced in our earlier papers. In this article, this theoretical approach we amended by wedding traditional formal account of argumentation in jurisprudence to a semiotic account of argumentation and this combination yields a reliable account of the conditions under which legal actors produce legal arguments. Such a juridical *cum* semiotic account of legal reasoning provides, as we contended, a plausible theory of the creation of meaningful legal arguments within legal discourse.

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. First of all, by examining the assumptions necessary to generate such a methodology, we have clarified the relationships between semiotic, rhetorical and logical images of legal discourse. Then, in order to eliminate discrepancies, we have implemented the model of ‘creolization’ of two distinct metalanguages, that inevitably leads to the reducing of those distinctions and that may have far-reaching consequences for the further studies of legal argumentation.

4.4. The Case of Lauris Kaplinski: A Guide to a Semiotic Reading of Incitement of Hatred in Modern Criminal Justice [Article IV]

In the next (the fourth) component article of our dissertation, we took our point of departure in the legal meaning making process as a semiotic activity of individuals participating in legal discourse. The fourth article is very different from the rest of the articles included herein: in this article we concerned ourselves with practical issues for the participants in particular types of legal discourse (criminal trials) rather than with semiotic 'modeling'. It goes without saying that it is a characteristic of some types of legal discourse, particularly judicial, that they purport to provide an account of their own production, with special emphasis on interaction and the local accomplishment of meaning in the trial. Since the construction of an overall semiotic model of law requires consideration of the semiotic relationship between juridical argumentation and construction of the legal subject through the different stages of legal communication. Such a semiotic relationship has been held forth as manifesting the specificity of legal communication. We took a criminal trial to be a good illustration of this specificity – indeed criminal justice is the area of law where we are closest to an overview of the semiotic processes through a succession of organizational contexts. We start with the first call to the police and conclude with the criminal trial or appeal. The main stages in the process may be characterized as (police) investigation, the exercise of prosecutorial discretion by public officials, and the trial. The attention of legal philosophers and semioticians alike has been directed primarily towards this last. However, it is important to draw attention also to the earlier stages, and to the possibilities which exist of fitting them within a single semiotic framework of analysis. In our article, the focus varies according to specific interests, i.e., we started with an investigation of the legal meaning process from a point of view of narrative semiotics (semio-narrative approach), and then we shifted our focus from discussion of the theoretical model to the application of this model in Kaplinski's case. However, it is important to draw attention also to the earlier stages, and to the possibilities which exist of fitting them within a single semiotic framework of analysis. The semio-narrative approach makes it possible to understand the evaluation as a cognitive operation underlying the judge's argumentation, the construction of the legal subject and the indication of judicial stance in legal cases. Another advantage of legal semiotics over more traditional positivist accounts of legal discourses is that semiotics pays more attention to what is conveyed by messages and on how these messages (signs) are put together in legal discourse, while traditional post-positivist accounts of law focuses more on the rational reasons (rational discourse, etc.) underpinning legal discourse.

4.5. The Splendors and Miseries of Constitutional Reasoning in Times of Global Crisis: A Critical Look from the Realist Perspectives of Semiotics [Article V]

In looking over different critical responses, we have seen an argument raised by media and legal scholars, according to which courts' capitulation before the power of financial markets in the EMS rulings represents ‘a sign of judicial crisis’ that marks the weakness of modern European jurisprudence. In light of their importance, we undertake a preliminary semiotic analysis of the ESM rulings of the Estonian National Court, the German Constitutional Court, and in the European Court of Justice. Our analysis aims at discerning the crucial aspects of those rulings is performed on the basis of different semiotic methodologies combined with the refined ideas of the Scandinavian analytical school of the doctrinal study of law. In traditional legal studies there seems to be a taken for granted assumption that there is one analytical way to dissect judicial reasoning of the supreme courts. But the matter turns out on closer examination to be more complicated. It is argued in our paper that the manner of reading the constitutional reasoning needs to be congruent with particular methodologies of scientific inquiry. By employing different semiotic theories We have presented an applied semiotic method for analysing the manner, in which judges of constitutional courts have reviewed the ESM treaty (the European Stability Mechanism Treaty) and subsequently constructed ‘European’ meaning of ‘stability community’. This ‘European’ meaning was constructed in the sense of setting forth standards that are commensurate to the status and the function of the Union, without a need of complying with specific ‘German’ meanings as regards the foundational principles of Germany’s constitutional order. The Courts did so by referring to a very specific ‘European’ value, which is defined in terms of its design as a stability union, that the monetary union has to date been given under the Treaties. In our article we claimed that the specific European value of stability is nothing else than a zero sign or zero degree, that is, the absence of an explicit signifier which functions by itself as a signifier.

5. CONCLUSION AND PERSPECTIVES

5.1. Conflict in Legal Argumentation as a Semiotic Device

In the previous sections of our thesis, as well as in published papers, we argued that the cultural criticism of law might be seen as an auxiliary aspect of the hermeneutic/deconstructionist reading of law, albeit the aspect well worth exploring. Faced with positivist theories of law, hermeneutics and deconstructions have no qualms about putting into play the argument more directly linked to the relevance of reading regarding legal meaning, in the same manner a similar point could be made from the perspective of semiotics, from which we can obtain many more insights related to the methods of the conflict resolutions. It is also true that the major difference is that in semiotic analyses we set the higher significance to conflict as a critical concern for contemporary theories of law and legal reasoning. Basically, rather than accessing legal positivism according to the litmus test of its methods, it behoves us to make sure whether legal theories can adequately deal with the concept of conflict, or these theories are limited by intellectual constraints and professional interests which reduce the possibilities of meaningful consensus. What we are insistent about is that the practices and presuppositions of neo-liberal legalism (recently classified by MacCormick as 'post-positivism' (MacCormick 2007)) should be re-considered from the new critical perspective.

However, for the purposes of our article, it is sufficient to merely make note of legal positivism. We argue that the new trend of positivism exemplified in writings of such prominent legal scholars as Ronald Dworkin, Neil MacCormick and Robert Alexy must be challenged as failing to live up to the aspirations of the complexity of legal reasoning. Although both 'soft' and 'hard' versions of positivist theory are rather generic labels used to refer to a lot of legal theories whose common place consists in barely sketched critical approaches to legal matters, some of its forms (MacCormick's 'institutional theory of law' (MacCormick 2007) etc.,) are continuing to permeate the law with its interpretative/argumentative manipulations. Lastly, genuine forms of 'pure' positivism are almost as rare in recent jurisprudence as it was popular in the middle of the 20th century. In the 'hard' version of positivism, legal positivists accepted interpretative presuppositions as some sort of theoretical foundation for evaluating the acceptability of interpretations. As we can observe in the case of 'soft' legal positivism, in justifying its highly questionable claims it has no other choice but to resorting to universal ideal rules of practical rational discourse. The latter ones, either do not exist at all, or appear to be so conventional that they have only minimal influence on the actual discursive activity. The main contribution of so-called 'post-positivism' is that it re-introduces tenets of natural law by conveying opposition theory to established positivistic theories of law. Generally speaking, post-positivist critique concerns the well-known dichotomy that implicitly separates 'theories of law' from 'theories of adjudication'. A key

aspect of this post-positivist tackling with theory of adjudication has stemmed from Dworkin's assumptions, according to which legal norms are defined by social reality (Müller 1977: 75).

There have always been critical voices against separating pragmatics of law ('justification') from semantics of law ('theory of law') and the response which post-positivism chooses, appears to be particularly resonant with Alexy's ideas. Without going into philosophical intricacies, Alexy made it possible to revitalize a wide range of different traditions – from British and American analytical philosophy, Perelman's studies in rhetoric, and Habermas' theory of discourse and German tradition of hermeneutics. Making use of this rich synthesis, Alexy, in his attempt to avoid the basic dilemma of legal reasoning, introduced a new procedural approach to the topic of legal justification, and established the basic discursive principles to which reasonable appeal may be made in order to justify decisions of any sort (MacCormick 1983: 7). Notice that Alexy is talking about a certain tension in positive law without trying to specify, whether he is talking about conflict of interpretation or about a principle of authority, as opposed to substantive reasons (Alexy 1989). The stance of basic discursive rules has been explicitly expressed in the dispute between Raz and Alexy on the topic of conflict of laws. According to Alexy any discursive constraints appear to be justified only if one participant of discourse has convinced its proponent in a dialogue that justifies certain constraints in cases of conflict. Alexy's account of rational justification has been subject of extensive academic debate, with the scholars raising questions ranging from whether an account of justification can be offered solely in terms of tension between substantive reasons and the authority. Nothing just said is likely to trouble Alexy's main proponent Joseph Raz, who expressly tackles the issue of Conflict of Laws in his commitment to critique of Alexy's conceptions. He argued that Alexy's argument of the inevitable presence of the principles of conflict resolution on in all legal systems is invalid for it concludes that the law of a country includes principles from the sole premise that the courts are required, by law, to apply principles. However, the courts of Britain are required by law to apply standards of foreign law, and many others which are not parts of the law of the land in Britain (Raz 2007). Raz concludes that external norms may be 'adopted' by a positive legal system if the external norms belong to another normative system practiced by its norm-subjects and which are recognized where the system intends to respect the way that the community regulates its activities, or those are norms which were made by or with the consent of their norm-subjects by the use of powers conferred on them by the system in order to enable such individuals to arrange their own affairs.

Raz's scepticism aside, we deem a mere simplistic post-positivist generalization of legal reasoning to be unsatisfactory: although Alexy goes to great lengths to elaborate an account of rational argumentation**,** this account surely appears problematic on its own terms, since Robert Alexy believes that the law is a unitary non-conflicting set of rules. Even when legal scholars appear to have accepted the special rules (*lex posterior and lex specialis*) as a knockdown

solution for reducing the discretion of the judge who is faced with incompatible norms and has to decide which to apply, the problem remain persistent**.** Just think of all the countless number of conflicting dispositions. What is needed to be introduced instead of post-positivist model of legal reasoning is a new semiotic account of reasoning in law, which starts with assumptions that legal meaning is mediated through different semiotic devices used for construction of legal meaning. The aim is to provoke interest in an alternative way of approaching the issue of conflict in law that may avoid difficulties and disputes which continues to bedevil the splintered positivism with contradictory and incoherent views.

Let us start with a quick summary of a new approach. The reader's first reaction would be, perhaps, how semiotics could contribute to the topic of legal reasoning. To assure that our reader will grasp the meaning we will try to convey, we argue that is not difficult for a modern legal scholar to glimpse the affinity between semiotic modes of legal communication and the art of reasoning in theoretical jurisprudence. Thus, we should say that semiotics emphasizes the underlying communicative structure of all sign systems, such as law, which are dynamically evolving and are open-ended. In other words, to describe the mode of construction of meaning through semiotic devices in process of legal communication is to describe a semiotic model of reasoning; and to make legal sense of the constructed meaning is to compare the situation in question with narrative typifications of action. The notion of 'typification' deserves a closer look: this notion is far from being the reserve of sociology, and it is used to address the concern of explaining the model of legal communication which is marked by shared typifications of habitualized situations, actions, and by actors who perform roles and observe norms associated with these typified roles and situations (Berger and Lukmann 1966). The same notion is also employed by Bernard S. Jackson in his influential *Making Sense in Law*; Jackson goes even further by arguing on the basis of Greimas' semiotics that the pragmatic intelligibility of a legal action is mediated through narrative typifications of legal behaviour, which are always accompanied with the transfer of modal value (Jackson 1995). Jackson refined the concept of a collective image (which is an approximation of factual situations) and developed it into the paradigm of narrative typification: in assessing the plausibility of a particular narrative we make (within existing semiotic constraints of narrative grammar) comparisons with the typifications which are socially constructed, since the collective image always comes laden with a tacit social evaluation. Since there might be many ways in which justification contains important connections to evaluation, the model of 'narrative typification' is capable of generating judgments which are always relative to particular 'semiotic group' (Jackson 1995: 93–98). In short, what Greimas' school does is to access the analaysis of legally relevant issues by using narrative typificiations: in other words, it subordinates the indetermined legal situation to defined pattern of typifications. The acceptance of Greimas-Jackson's paradigm was a key methodological stance that guided many semiotic studies on legal reasoning.

Although there is also much common ground with Peircean semiotics of law in identifying semiotic features of conflicting interpretation, Greimas' semiotics is less concerned with what we could be called pragmatic principle of reasoning: the meaning of conflicting interpretations consists in all of their conceivable future consequences which could conceivably occur if ever put to the test; that is our conception of these future conceptions is the whole of our conception of the object.[11]. In Greimas' semiotics, we may observe different semiotic groups using different semiotic devices in producing particular discourses, which later become accentuated in the process of legal communication. One obvious problem with the Greimas School's reliance on a model of 'semiotic groups', is that it doesn't explain what is happening in the case of conflict. The conflict produces alternative evaluative accentuation of legal problems unfolding thus the paradoxical structure of law: the particular accentuations of law have been un-accentuated by ideologically determined glance of attention during a distinguishable stage of legal reasoning. The notion of paradoxical structure envisioned by Peirce's legal semiotics would require a further explanation. While the obsession of Greimas' semiotics with the fixed sign relationships in legal discourse blocks the road of more abstract semiotic inquiry of paradox, Peirce's semiotics opens the road to a new field of inquiry into 'pragmatics' of the paradoxical structure as applied to the different systems of legal reasoning. The field of inquiry is henceforth open and usually the inquiry begins with the perception of an indeterminate legal situation by evaluating the contingent, anomalous and extraordinary elements of sign systems in their mutual development. Thus, we are able to enhance empirical studies of conflicting interpretations with Peirce's concepts in such a way that we are able to open up a new understanding of legal reasoning and to grasp the implications of the new understanding for the analysis of practical issues of conflicts in law.

In previous sections much has been said on the problem of conflict in jurisprudence. While, each part described dimensions of conflict, the rudimentary problem is that the definition of conflict is usually taken for granted (a priori). The situation, seen from semiotic perspectives, looks very different: each such situation of legal indeterminacy calling for legal interpretation is that of a sign relationship between the defined (an established legal practice, a statue, a norm) and the vague (foreign) element:

> A proposition is vague when there are possible states of things concerning which it is intrinsically uncertain whether, had they been contemplated by the speaker,

[11] CP 5.402. Please note that we are following traditional abbreviations for citing Peirce's works. Abbreviation CP stands for The Collected Papers, Vols. I–VI ed. Charles Hartshorne and Paul Weiss (Cambridge, MA: Harvard University Press, 1931–1935), Vols. VII–VIII ed. Arthur W. Burks (same publisher, 1958). In citation, CP 5.402 refers to Volume 5, paragraph 402. (Sometimes this is followed by the year when Peirce wrote the text.). Another abbreviation EP stands The Essential Peirce: Volume 1 (1867–1893) and Volume 2 (1893–1913), edited by the Peirce Edition Project and published by Indiana University Press (1992 and 1998).

> he would have regarded them as excluded or allowed by the proposition. By intrinsically uncertain we mean not uncertain in consequence of any ignorance of the interpreter, but because the speaker's habits of language were indeterminate (Peirce 1902: 748).

We should however that this is *not* a *new idea by any means: we have already encountered t*he model of paradox which is employed by Perelman's new rhetoric as some kind of a rhetorical mode of interpretation (Perelman and Olbrechts-Tyteca 1958). Before continuing with Peirce's version of legal semiotics, we wish to emphasize that Perelman's new rhetoric remains silent about the paradoxical structure of legal reasoning. Further, it seems to be more than a coincidence that in Peirce's semiotics the analysis of legal reasoning is related to the semiotic problem of determining the indeterminate, i.e. that sign of the relationship of vague with definite which indicates the process of growth of ideas. Anglo-American jurisprudence provides a revealing and colourful illustration of this point: a remarkable feature of Common Law is that it has abilities to transform and to grow on its grounds, to interpret the law where it is vague and even to establish new rules. In open legal systems, it is the component of vagueness or *that which is seen as new and not yet classified as a general idea/sign, not yet named and thus symbolized*, which confronts inquirers with a phenomenon of a paradoxical nature (law as a system of contradictions). According to semiotic conjecture, the concept of paradox as an intrinsic structure of thought is closely related to problems of conflict, contradiction, incompatibility, and repugnance in law ('repugnancy' is used here in the same sense it was used in Bentham's works (Bentham 1907), i.e., when law is the repugnant to other individuals' rights). One needs not contest this particular point, since the semiotic methodology is indispensable here, for it provides a captivating model for the analysis of conflict not only within similar systems and between two distinct systems of discourse and practice as well. This concept of conflict as systematic tension has far-reaching methodological implications, for instance in emergent law of European Union (Robertson 2010).

To make this point even more comprehensible, we should recall that although Charles Sanders Peirce was able to work a solid foundation which would later be applicable to more complex semiotic account of law, he had discussed legal concepts only on few occasions to illustrate some of his ideas. The undeveloped project of legal semiotics anticipated by Peirce was later resurrected by Roberta Kevelson; Peircean insights transpire through Kevelson's provocative body of work, in which she developed her original theory of legal semiotics. It is interesting to note that Kevelson saw her own ideas as being in some kind of hermeneutic dialogue with the texts of Peirce, whose meaning she helped to complete and translate (albeit in a speculative manner) into the elements of a coherent semiotic theory. In producing a speculative grammar of legal semiotics that transcended the works of her predecessors, Kevelson managed to integrate highly suggestive semiotic works of Peirce into the realm of legal theory.

The dialogue between Kevelson and Peirce's texts led to the emergence of what is known as Kevelsonian legal semiotics or semiotics of legal argument, which generates a new method of legal inquiry unifying science and phenomenology, since it centres on the pragmatic structure of legal inquiry. The modern synthesis of Peirce's semiotics and social sciences was only just getting underway, when Kevelson published her first paper about the relationships between law and human sciences (Kevelson 1992). Law is a practical institution, which becomes through its practicality an affirmation of the values of the social practice. On the other hand, like phenomenologists and Mukařovsky, Kevelson likened law to an aesthetic object of human invention, which may be investigated for new innovative knowledge, if it meets the basic criteria for any sign, any idea of thought or system of thoughts in a pragmatic praxis: it must produce meaning and it must leave its accentuated mark. Yet, amidst rising expectations of legal semiotics, we should notice that its image of legal innovations is radically different from that one endorsed by legal positivism. From positivist perspective, the law is able to appreciate innovation only after it becomes a matter of habitual convention, while semiotic perspective presumes distinctive attitude to the nature of innovation: to produce an innovative legal text is to break away from conventions and rules and to express creative freedom and imagination. Here, the differences between traditional legal studies and semiotics with respect to objects of inquiry are particularly suggestive of the nature of semiotic discourse. Legal studies use the known properties of legal signs to investigate the structure of the law, whereas semiotics uses the known structure of law as a starting point for investigating the structure of law.

In the context of Kevelson's legal semiotics, the bridge between the semiotic model of legal inquiry and Conflict of Laws becomes apparent. A special corollary of this statement is exemplified by the concept of 'moral conflict' that considers legal reasoning not only as a process of proceeding from the principles and rules held by conscience to the solution of particular legal cases, but also as a process of justification of the legal decision taken before the conscience of the judge and of the sovereign (society). In the cases of moral conflict between judges' conscience and conscience of sovereign, the model of 'moral conflict' offers a mechanism which allows judges to reconcile their conscience and conscience of sovereign, expressed in legal rules. It is exactly at that point where these two frames of reference (judges' conscience and conscience of sovereign) come together, one universe of discourse is being brought into a relation of superimposition upon another and the traditional law of identity and contradiction become irrelevant. In adherence to this semiotic principle of 'crossing bridge', there is no significant difference between semiotic concept of tension and Conflict of Laws. In this perspective, we may regard Conflict of Laws as a claim made by legal actors, individuals and organizations. Implicit here is the concept of claim which involves reference to two or more distinctly different generally acknowledged and usually observed legal rules, procedures or practices within the one legal systems: in modern open innovative legal system there is no single type of interpretation that could claim universal validity of its assumptions,

representing, let say, the grandstand view on how legal contracts should be translated (Kevelson 1991: 44–45). To add here external dimensions of this paradox in Conflict of Laws which fall under the scope of relationships between local legislation and private international law? As we show below, Kevelson's stance is interesting because of its immediate implications in the process of 'law-finding'. Thus, semiotics affords at least one approach that unfolds in *locus operandi* of international law and Conflict of Laws.

The process of international law-finding requires from international lawyers to examine whether the generality of national jurisdictions evinces attitudes, which are congruent to the provisions of international customary law: in reality this process is simply amenable to a search and analysis of an o*pinio generalis juris generalis*, which is shared among States (Hutchinson 1996: 46). From a semiotic point of view, we may also conclude that a legal interpretation can be said to represent a particular semiotic process (token) most appropriate to it. From this viewpoint, the notion of interpretation as "it affects or relates to legal hermeneutics, is brought to a point of view which necessarily stands in opposition to hermeneutic principle which holds that '*In claris nonfit interpretati*o', or 'when the text is clear there is no room for interpretation'" (Kevelson 1986: 363). Considering the aspect of legal competence, the pragmatic concept of interpretation accentuates the famous interpretative principle of *clara non sunt interpretanda,* i.e., only if clarity of the legal text is doubtful do judges have permission to interpret.

In effort to understand the patterns of legal reasoning and to enrich the semiotic approach with legal hermeneutics, we can point to striking analogies with so called derivational theory of interpretation (based on the meaning of a word derived from a particular linguistic context). As Kevelson's long passage above suggests, legal reasoning has to deal with universal hermeneutic problems: not only laws and norms, but also rules for interpretation in legal systems must themselves be subject to re-interpretation. Here, interpretation is coming to be viewed as means of expanding, reordering and even reinventing the rules. Taken from that perspective, legal semiotics permits the dominant principle of *clara non sunt interpretanda* in judicial justification to be overridden by another interpretative canon of *omnia sunt interpretanda* (Zirk-Sadowski 2011: 4). What we have here is a brilliant characteristic of the dilemma faced by the traditional approach of modern courts that regards the legislative categories as closed categories. Regardless of meaning attached to these categories by legal actors, the legislative categories can be interpreted and reinterpreted but not reworked or extended. However, it is hard to fail to notice that this traditional approach does not work in those cases, where a statute represents a general or vague judgment and where there is a conflict between rules for interpretation in the system of law which prevails. In these cases, the process of interpretation constitutes "a more abstract process of discovery, which in turn, takes its cues from the world of experience and observation and forms its hypotheses as abstracted from the actual, practical world" (Kevelson 1985: 126). However, if the rules of interpretation and those ones of discovery are said to be a part of any given system of

law which they govern, then it must be conceded that the system of law, as a whole, is unstable and that this instability is desirable. On the other hand, if we understand that signs of law are omnipresent in social discourses, then we must accept that those signs are created by social actors in different legal contexts. Indeed, the realm of practical jurisprudence judges may be intentionally duplicitous in exercising their vast power, because "their use of linguistic argument as justification is by no means consistent, and is frequently inconsistent and idiosyncratic" (Solan 1993: 1). In this respect, we can recapitulate Lotman's treatment of semiotic models: each element of a model and the model as whole are simultaneously parts of more than one system, while acquiring their own distinctive meaning (Lotman 1977).

Actually, this is exactly what was implied by Peirce's account of interpretation: the traditional laws of thought are inadequate to describe the actual process of evolving ideas, and a new brand type of logic needs to be constructed which, at the same time, sustains paradox and accounts for contradiction and which doesn't not attempt to impose reductive solutions. As has been repeatedly demonstrated by Kevelson, this new type of logic is logic of questions and answers or an erotetic logic to which deontic logic is subordinate and derived (Kevelson 1981). From the point of view of semiotics we might say that this new type of logic underlies its novelty with respect to functions of 'pure rhetoric', which strives to ascertain the laws by which one thought brings forth another. In other words, erotetic logic of dialogism presupposes direct conversational dialogue "in a process of reasoning which attempts to account for the method by which new information is discovered, processed and integrated, into continually evolving, open-ended system of reasoning, which parallels the method of creating human discourse" (Kevelson 1982: 161). The dialogism is a means of dividing an argument into a number of concurring arguments, each of which has only one premise but two alternative conclusions/interpretations/ consequences, and these arguments may be evolved infinitely until one finds satisfactory solutions.

The view of the late Peirce on the essence of interpretation was epitomized by his famous statement:

> What does it mean to speak of 'the interpretation of a sign?' A sign is complete only then when it is explained (CP 2.230), translated (CP 5.594, for instance), interpreted (CP 5.569). Interpretation is merely another word for translation (EP2: 388).

Since the meaning of the sign is the translation of the sign into another system of signs, the meaning of a sign is the sign into which it has to be translated. What we want to emphasize here is that signs interpret their referent signs and an Interpretant (understood as an effect actually produced by a sign upon an interpreter of it) acts as a translator whose function is to bring together different sign systems by establishing an equivalent meaning between representations of the same idea /concept in those different sign systems. It is obvious that Peirce's

phenomenology is nothing else as a preliminary stage to the semiotic inquiry methodologically corresponding to discovery in law. The semiotic process of discovery in law attempts to conceptualize a means of bringing together legal and non-legal discourses by proposing semiotic account of interpretation. Yet, the assumption seems to challenge the traditional positivist position, according to which legal interpretation is a strictly semiotic process: in a positivist theory of law, the meaning of legal texts is conceived as being transmitted from sender to recipients. For legal positivist, it seems natural to consider the central task of legal reasoning to be the uncovering of legal meaning included in messages communicated in legal discourses. When the discussed theoretical method comes in confluence with juridical realities, we might say that law is created twice by its author and addressee. This is how this semiotic sentiment is expressed in Witteveen's account of legal communication: according to Witteveen, 'symbolic law' is communicated through series of circular movements between the addressee (citizen) and the author (legislator) (Witteveen 1999). Taking this model of legal communication seriously, we might come to an astonishing solution of conflict: many duly enacted laws do not come to mean very much for most of their intended audience when those the law addresses on paper have no need or no incentive to make it part of their actual considerations.

From this point of view, semiotics as a whole is concerned with how one level may be translated into a different level or method of inquiry. Thus, in order to illustrate semiotics models of reasoning we could regard the idea of interpretation in Peirce's semiotics as being parallel to an interpretation in legal theory. Below we'll offer Peirce's account of interpretation, overall model of which was discussed in a milestone paper by Max H. Fish (Fisch 1942). To clarify the basic concepts, we ought to truncate the complex aspects of Peirce's account to the level of a simple pattern we call 'pragmatic interpretation'. Peirce's basic thesis was that general concepts get their meanings not from their antecedents in sensation, as traditional empiricism had it, but from their practical consequences in action; all judgments lead to consequent acts and what we know to be true, we know because of the effects of their acts upon us. The concept of meaning as the sum of possible practical consequences and effects of human actions is crystallized in Peirce's pragmatic maxim:

> In order to ascertain the meaning of an intellectual conception one should consider what practical consequences might conceivably result by necessity from the truth of that conception; and the sum of these consequences will constitute the entire meaning of the conception. (CP 5.9)

Peirce's conception of clarity contains the idea that in order to define the meaning of words we have to test them. In other words, we know what these acts mean to us by interpreting them, by inferring meaning in a manner with regard to the thing in question until we have settled doubts and achieve some sense of certainty, which we hold and use as true. The very similar idea is expressed in Holmes' instrumental approach to the theoretical discourse of law. This ap-

proach has come to be enshrined in the jurisprudence history as 'the prediction theory': 'law' is seen as the set of predictions of judges' decisions. As it has been shown by Max Fish, Holmes' 'prediction theory' was directly influenced by Peirce's account of pragmatic interpretation. Holmes was very explicit in his refutation of some of the earliest formulations of interpretation rules which appeared in the nineteenth century. It is the merit of Common Law that it firstly decides the facts of case and only afterwards determines the principles: the cases are decided as questions of normative law; the principles are articulated on the basis of a number of individual cases.

In conclusion, we have to admit that our discussion of different perspectives on the concept of 'conflict' in legal discourses comes down to outlining the methodological reversals in Conflict of Laws, phenomenology, hermeneutics, deconstructionism, and semiotics. If we would accept this claim, then we could say that Conflict of Laws was born from the reversal of the priority of understanding over practical actions. It is given this presupposition that Conflict of Laws comes to stand on its own as something distinct and formalist. Here, we are taking the term 'formalist' in its strict sense: it is understood as adherence to a norm's prescription without regard to background substantive reasons. By virtue of this reversal, Conflict of Laws moves away from a communicational model of law towards the doctrine of normative evaluations, wherein formal conditions of validity take priority over substantive reasons. This methodological reversal might be one reason why the doctrine of Conflict of Laws was never able to develop theoretical generalization of its basic concept 'conflict'. It also seems plausible to suppose that phenomenology of conflict assuredly does stem from another methodological reversal, the one which gives the priority to essentialist observation of human actions over hermeneutic doctrine of literal meaning and semiotic representations of these actions. The problem of conflict for phenomenology is that of a clear distance between two conflicting subjective viewpoints, since classical phenomenology posits that we can only perceive things through our subjective relationships to these things. Therefore, the phenomenological potential of dealing with 'conflict' is very limited. Hermeneutics (including phenomenological hermeneutics) is accompanied by the methodological reversal of understanding over explanation: it extends the subjective tradition of phenomenology even further by incorporating the concept of interpersonal communication. What comes to its subject-matter, then we must admit that hermeneutics from the beginning of the 20th century has deliberated upon the perennial absence of meaning, the fusion of subjective horizons, and the unconscious. The biggest problem with the project of deconstruction is that since each person is being bound to his own subjective view, there is no method of discovering objective truth in conflict situations and communication becomes helpless. To be honest, although legal hermeneutics stipulates a quasi-necessary and explicit order of priority for different hermeneutic methods, it seems that at least some aspects of this order look very problematic in the context of practical jurisprudence. Furthermore, the infinite drift of meaning proclaimed by the

members of deconstructionist project brings forth certain problems in its applications to the analysis of legal reasoning.

Thus being said, we have adopted a more or less defensive stance in favour of legal semiotics: what is at issue is the defence of semiotic approaches in the face of aforementioned problems of practical jurisprudence with which they do seem adequte to cope.

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SUMMARY IN ESTONIAN

Juriidilise argumentatsiooni semiootilised mudelid

Käesolev dissertatsioon kujutab endast katset käsitleda kaasaegset juriidilise tõlgendamise teooriat võrdleva kriitilise meetodi abil. Selle projekti käigus oleme analüüsinud erinevaid juriidilise argumentatsiooni teooriaid; neid teooriad kõrvutades oleme püüdnud välja selgitada, kas teoreetiline diskursus tänapäevases õigussemiootikas loob piisavad eeldused selleks, et visandada teoreetiline raamistik, mis aitaks kaasa juriidilise argumentatsiooni semiootilise teooria loomisele. Huvi juriidilise semiootika (ehk õigussemiootika) vastu tulenes peamiselt sügavast rahulolematusest olukorraga kaasaegses teoreetilises jurisprudentsis (eriti selles osas, mis on otseselt seotud juriidilise argumentatsiooni probleemistikuga). Ajalooliselt on välja kujunenud nii, et 'traditsiooniline' jurisprudents (jurisprudents selle sõna kõige laiemas mõttes) toetab õigussüsteemi ühtsuse mudelit, mis enamjaolt ei kirjelda, kuidas reaalses juriidilises diskursuses toimub diskursuses osalejate omavaheline juriidiliste hoiakute vaheline kommunikatsioon. Just juriidilise kommunikatsiooni semiootilise tegevusena esitamine oli selleks lähtepunktiks, mis andis meile tähtsaima põhjuse kahelda selles, et seadust võib adekvaatselt kirjeldada ja määratleda ainult traditsioonilise õigusmõistete kaudu. Sellest lähtuvalt võib kindlalt väita, et juriidilise semiootika suurimaks eeliseks ongi see, et juriidiline semiootika püüab elimineerida eksitavaid ettekujutusi õiguse tõlgendamisest ning asendab need alternatiivse käsitlusega, mis laiemas perspektiivis tundub olevat märksa viljakam.

Käesoleva dissertatsiooni eesmärgiks on analüüsida juriidilise tõlgendamise olemust semiootilisest vaatenurgast. Juriidilise argumentatsiooni ehk õigusliku tõlgendamise analüüsi käigus on püütud astuda mõned sammud loodetava õiguse tõlgendamise teooriate sünteesi poole. Nagu teada, on tõlgendamise peamiseks eesmärgiks välja selgitada seaduse mõte (lad. *ratio legis*) ehk teha kindlaks tõlgendatavas sättes väljendatud reegli, põhimõtte või mõiste sisu. Seega kujutab kohtumõistmine endast loovat, õigust edasi arendavat tegevust, ja sellest lähtuvalt on käesolevas dissertatsioonis pandud põhirõhk just seaduse rakendamisele ehk kohtupidamise käigus toimuvale tõlgendamisele. Taoline rõhuasetus on täiesti arusaadav: iga seadus peab toimima, kuid see juhtub ainult siis, kui seaduse rakendamisel saadakse seadusest mõistuspäraselt aru. Kesksel kohal on siinses esituses erinevate tõlgendamiste konflikti mõiste, mida olen teoreetilises plaanis väljendanud mõistega *tension* (pinge): semiootilisest vaatevinklist on kõige olulisem spetsiifilist juriidilist tähendust loov mehhanism, mis realiseerub erinevate tõlgenduslike lähenemiste ja meetodite tulemusena. Olenemata rõhuasetustest saab viiteid sellele käsitlusele nii otseselt kui kaudselt tuletada väitekirjas analüüsitud kohtupraktikast. Kokkuvõttes võib isegi öelda, et uus semiootiline mudel aitab meie arvates jõuda antud uurimuse eesmärgini ehk aitab luua uut raamistikku õigusaktide ja seaduste tõlgendamise mehhanismide mõistmiseks.

Kõrvuti analüüsiga õiguse tõlgendamise olemusest võime dissertatsiooni eesmärgid lühidalt sõnastada järgmiselt:

- arendada kontseptuaalne raamistik juriidilise argumentatsiooni erinevatel etappidel tekkivate probleemide käsitlemiseks.
- arutleda küsimuste üle, mis ilmnevad seoses juriidilise argumentatsiooni üldlevinud meetodite mittetäieliku ühilduvusega pakutud semiootilise mudeliga.
- vaadelda, kuidas ühendada omavahel erinevaid õiguse tõlgendamise teooriaid ja semiootilist meetodit praktikas.

Käesoleva dissertatsiooni peamised tulemused ja järeldused on järgmised:

- dissertatsiooni raames on juhitud argumenteeritult tähelepanu mitmete juriidiliste argumentatsiooni teooriate puudustele. Nagu dissertatsioonis on kriitilisest vaatavinklist näidatud, tuleb seletada teooriate puudulikuse põhjusi semiootilises võtmes.
- kuigi õigusteadlase ja õigussemiootiku perspektiivid juriidilise argumnetatsiooni võivad näida kokkusobimatud, on nad siiski komplementaarsed ning toovad esile ühise vaatepunkti.
- juriidilise argumentatsiooni semiootilise analüüsi aluseks on Peirce'i semiootika/Pariisi koolkonna semiootika mõistete abil loodud teoreetiline raamistik. Dissertatsioonis on erialase kirjanduse põhjal välja toodud peamised pidepunktid, mis on vajalikud uue teoreetilise raamistiku väljaarendamiseks.
- dissertatsiooni raames loodud teoreetiline raamistik on uudne. Teoreertilise raamistiku uudsus väljendub selles, et uurimuse käigus on seostatud klassikalisi juriidilise argumentatsiooni teooriaid semiootilise käsitlusega.

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2006 University of Tartu, Magister Artium in Semiotics and Culturology, "On some parallels between Tartu-Moscow cultural semiotics and the current scholarly developments in legal semiotics. Supervisor: Mihhail Lotman.

2008 Tallinn University / Union of driving schools and traffic-related educators, applied higher education in traffic training.

2009–2013 University of Tartu, doctoral student in Semiotics and Culturology. Supervisor: Mihhail Lotman

Employment:

2002 Dixi OÜ, lawyer

2002 Tallinn University, Estonian Institute of Humanities; lecturer of legal semiotics (0.50)

2002–2006 Police and Border Guard Board, police inspector, crime investigation

2006–2011 Police and Border Guard Board, senior police inspector, crime investigation

2011– Police and Border Guard Board, police commissioner, traffic crime investigation

Professional awards:

2013 Police Exemplary Service Cross.

Academic activity and award:

Research topics: Semiotics of law; Philosophy and theory of law

Teaching experience:

2002 Tallinn University, Estonian Institute of Humanities; lecturer of legal semiotics (0.50)

Participation in international conferences, roundtables and workshops:

2003 Conference "The Baltic Studies: frameworks of cooperation in the Northern Europe", Turku University.

2003 Conference "Social Stratification: Ethnicity, Gender and Class in Europe". The Jagiellonian University, University of Tübingen and University of Pécs.
2013 The 14Th International Roundtable for Semiotics of Law, Hanghzou (China).

Awards:
2007 The Juri Lotman Scholarship.
2012/2013 Kristjan Jaagu Scholarship.

Major publications published before the fall of 2009:
Verenich, Vadim (2009). *Juri Lotman's Cultural Semiotics on Law: On some parallels between Tartu-Moscow cultural semiotics and the current scholarly developments in semiotics of law*. VDM publishing house
Verenich, Vadim (2005). Verba and Voluntas – Conflict of Laws in Interpretation of Contracts. *International Journal for the Semiotics of Law* 18(1): 67–82.
Verenich, Vadim (2005). Introduction to The Special Issue: The Perspectives of the Tartu–Moscow Semiotic School on Legal Semiotics. *International Journal for the Semiotics of Law* 18(1): 1–4.
Verenich, Vadim (2003). Legal System: Can One Speak About Secondary Modeling System in Law? *International Journal for the Semiotics of Law* 16(1): 77–100.

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Haridus:

1996	Maardu Gümnaasium
2001	Tartu Ülikool, Bacalaureus Artium, semiootika ja kultuuroloogia "Legal Semiotics: narrativity and normativity" (Õigussemiootika: normatiivsus ja narratiivsus). Juhendaja: Peeter Torop.
2006	Tartu Ülikool, Magister Artium (teadusmagister), semiootika ja kultuuroloogia, "On some parallels between Tartu-Moscow cultural semiotics and the current scholarly developments in legal semiotics. Juhendaja: Mihhail Lotman.
2008	Tallinna Ülikool / Eesti Liikluskoolitajate Liit, rakenduslik kõrgemharidus,
2009–…	Tartu Ülikool, semiootika ja kulturoloogia doktorantuur. Juhendaja: Mihhail Lotman

Töö- ja teenistuskäik:

2002	Dixi OÜ, jurist
2002	Eesti Humanitaarinstituut; õigussemiootika loengukursus (lepinguline lektor 0.50)
2002–2006,	Politseiamet, politseiinspektor, kuritegude uurimine
2006–2011,	Politsei- ja Piirivalveamet, vanempolitseiinspektor, kuritegude uurimine
2011–	Politsei- ja Piirivalveamet, komissar, liikluskuritegude uurimine

Kutselised autasud:

2013 teenetemärk "10 aastat laitmatut teenistust", politseirist

Akadeemline tegevus ja huvialad:

Peamised uurimisvaldkondad: õigussemiootika; õigusteooria ja filosoofia
Akadeemilise õpetamise kogemus:

2002 Eesti Humanitaarinstituut; õigussemiootika loengukursus (lepinguline lektor 0.50)

Osalemine rahvusvahelistes töörühmades, konverentsides ja ümarlaudades:

2003 suuline ettekanne konverentsil "The Baltic Studies: frameworks of co-operation in the Northern Europe", Turku Ülikool
2003 konverents-suvekool "Social Stratification: Ethnicity, Gender and Class in Europe"
2013 suuline ettekanne konverentsil "The 14Th International Roundtable for Semiotics of Law", Hanghzou (China).

Teaduslikud auhinnad ja stipendiumid:

2007 Juri Lotman'i stipendium
2012/2013 Kristjan Jaagu stipendium

Peamised publikatsioonid enne 2009 a.

Verenich, Vadim (2009). *Juri Lotman's Cultural Semiotics on Law: On some parallels between Tartu-Moscow cultural semiotics and the current scholarly developments in semiotics of law*. VDM publishing house

Verenich, Vadim (2005). Verba and Voluntas – Conflict of Laws in Interpretation of Contracts. *International Journal for the Semiotics of Law,* 18(1): 67–82.

DISSERTATIONES SEMIOTICAE UNIVERSITATIS TARTUENSIS

1. **М. Ю. Лотман.** Структура и типология русского стиха. Тарту, 2000.
2. **Елена Григорьева.** Эмблема: структура и прагматика. Тарту, 2000.
3. **Valdur Mikita.** Kreatiivsuskäsitluste võrdlus semiootikas ja psühholoogias. Tartu, 2000.
4. **Ирина Аврамец.** Поэтика новеллы Достоевского. Тарту, 2001.
5. **Ян Левченко.** История и фикция в текстах В. Шкловского и Б. Эйхенбаума в 1920-е гг. Тарту, 2003.
6. **Anti Randviir.** Mapping the world: towards a sociosemiotic approach to culture. Tartu, 2004.
7. **Timo Maran.** Mimikri kui kommunikatsiooni-semiootiline fenomen. Tartu, 2005.
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17. **Anu Sarv.** Õppejõu enesereflеksioon ja professionaalne identiteet. Tartu, 2013, 141 lk.