Legal text and meaning

A linguistic perspective on a complex relationship

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1 Introductory thoughts

'A constitution speaks. So my experience as theoretician of constitutional interpretation has taught me. Constitution-speak is not a monologue, not a monolithic soliloquy, with the supreme constitution simply speaking for and on behalf of itself.' [1] Taking up this figurative image invoked by Lourens du Plessis, the question arises as to exactly who or what is speaking, from a communication-theory point of view. Is it the authors of the constitution, or is it the text of the constitution itself? Or do the authors of the constitution speak through the text of the constitution, along the lines of Foucault's view of discourse? Approaches to discourse which take an interest in legal theory generally orient themselves around Michel Foucault, according to whom discourses systematically construct the objects about which they speak.[2]

Let's take this position of Michel Foucault to be true and pursue the thought further. Against the backdrop of prevailing models of communication, we arrive at the assumption that it is most likely the recipient of the constitution who ascribes meaning to the original text of the constitution – who is thus convinced that he understands what is written in the text. This assumption is problematic from a semiotic point of view, because conventional wisdom holds that linguistic signs are arbitrary. As in general language, so in legal language: there is no natural connection between the symbol and its contents. A table could just as well have been called a "chair." And so, lawyers must not assume that the meaning is inscribed into the text itself, because in reality the construction of meaning only comes about through interactive language use and the way in which the text is applied. It is legal professionals who make the meaning. The arbitrary relationship between the form and content of linguistic signs is ameliorated by the semiotic property of conventionality. This is the only thing that makes communication possible in the first place. But how did this conventionalisation come about, or to put it more precisely: how did the participants in communication agree to follow certain rules, always using the respective expressions in a certain way, so that other participants in the communication can assume themselves to have understood the utterances? And which participants in the communication determine the rules for the use of signs within the context of the figurative image 'a constitution speaks'? Is it lawyers, politicians, or the common people? Can these groups communicate with each other at all, on the basis of their differing background knowledge and experiences with language use, or are we labouring under a mass delusion? Is the constitution using a legal language for special purposes (LSP), while citizens reply in a non-specialised general language?

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1 Du Plessis 'Constitutional dialogue and the dialogic Constitution (or: Constitutionalism as culture of dialogue)'.

2 Foucault *Archäologie des Wissens*.

Questions upon questions. In what follows, I will attempt an answer by presenting some thoughts on the complex relationship between normative text and meaning. I thus find myself confronted with the difficult task of 'answering' the question of how the meaning of texts in general – or legal texts in particular – could be modelled from a linguistic point of view. This undertaking seems all the more fraught with difficulty in light of the fact that neither linguists nor philosophers of language have yet been able to conclusively and satisfactorily resolve questions of meaning. Nor does legal theory have any convincing answers to the question of how legal professionals assign meaning to a legal text with respect to a certain case, or how they generate meaning out of said normative text.[3] This aim places us within the research field of forensic linguistics, comprising law as a realm of action from a linguistic perspective. To summarise: why is the question of meaning-generating in legal contexts so fundamental for constitutional democracy? The question of the role of language in law is central, because it is precisely in determining the meaning of legal texts that the actual justification for actions under the rule of law lies.

This paper will illustrate how the concept of semiosis (the process of substituting one sign for another, in an endless chain) can answer the question, heretofore unresolved in legal theory, of how meaning arises in the field of law. It will attempt to do so without giving rise to a new problem of legal uncertainty in terms of putting legal texts into practice. After explaining how this approach to meaning explication relates to Du Plessis's idea that 'a constitution speaks,' I will characterise the dialogue between constitution and citizens as a never-ending process of specifying and adapting the text of the constitution. It should thus become clear how the construction of legal meaning is negotiated discursively.

2 The point of departure

In his essay 'Constitutional dialogue and the dialogic Constitution', Du Plessis asserts the right of those who are subject to law to have that power be exercised over them with reference to written legal texts in general and the constitution in particular. According to Du Plessis:

> constitutionalism is one amongst many (possible) cultures of dialogue. Constitutionalism – of which the German equivalent is (more or less) *Rechtsstaatlichkeit* – is sometimes narrowly defined as the idea that government should derive its powers from a written constitution, and that such powers should also be limited to what is set out in the constitution.[4] However, a broader, value-laden notion of constitutionalism (*Konstitutionalismus*), as *the -ism of constitutional supremacy and justiciability at the heart of constitutional democracy*, is also feasible. It is in this latter capacity that constitutionalism instantiates a distinctive culture of dialogue neither drawing on nor constituting a monolithic master narrative of any sort, but manifesting in a plurality of dialogic events instead.[5]

Devoting our attention to the role of dialogue raises the question of which medium the dialogues are conducted in. That medium is of course language; and as a linguist, what interests me the most is the question – not uncontroversial in terms of legal theory – of the extent to which the ideas and intentions of the legislature are discursively further developed in the medium of language when the executive and judicial branches justify their actions and decisions with reference to this raw material, ie legal texts which are themselves formulated in language. We are dealing here with a very basic question, one also

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3 Du Plessis 'Constitutional dialogue'.
4 Currie and De Waal *The Bill of Rights Handbook* 8.
5 Du Plessis 'Constitutional dialogue' 691.

raised by Du Plessis in his thoughts on the 'Interpretation of the Bill of Rights' in *Constitutional Law of South Africa.*[6] I would like to take up this question here and, with reference to the semiotician Charles S. Peirce, make a proposal which may help to render the problem of meaning in law more concrete.

In line with my own approach to 'Constitutional dialogue and the dialogic constitution', Du Plessis elaborates on the orientating function of constitutions when he clarifies the statement 'The constitutions speaks': 'I must stress: it is *ongoing dialogic interaction* that keeps the Constitution as a monument from overwhelming the Constitution as memorial and, *vice versa*, the Constitution as memorial from enervating the Constitution as a monument.'[7] With regard to the wording of a written constitution, it is abundantly clear that the 'language of the end product thus harbours – and has the potential to activate – contested and even contradictory ideas, sentiments and values'.[8]

The point I am interested in is the following: dominance and power are also exercised through semantics. Language is regarded as a means for asserting certain views on controversial topics in intellectual domains (eg medicine, economics, architecture, natural science, history, law, etc). Within debates among professionals, disputes arise with regard to appropriate terminologies and definitions in these fields. In other words, 'semantic battles' take place. Language directs the constitution of facts within the framework of knowledge; knowledge is developed through language. Successfully establishing a certain wording for a fact means directing the perspective of the constituted reality.[9]

3 Legal language and meaning

I would now like to describe a curious state of affairs, but first it will be necessary to introduce certain preliminary considerations: in and of itself, the practice of law in the 21st century (following a long historical evolution) functions effectively, is rationally organised, and as such enjoys a high degree of intersubjective recognition and esteem – as do its practitioners and their professional conduct. Of course, individual court decisions or actions of legal functionaries will nevertheless stir controversy and can become the subject of debate both among legal professionals and in the general public.

For a forensic linguistic approach like the one taken in the present contribution, the following point of view is essential: substantive law which regulates the rights and obligations of individuals amongst themselves and with respect to the community as a whole, and procedural law which is involved with putting material law into effect, are fixed in written form in various texts and are represented by the latter. They reflect intersubjectively comprehensible efforts to achieve objectivity. Objectivity is usually a paradigm known from scientific discourse. Repeated references to the criteria of exegetical jurisprudence established in legal discourses confirm their evidence, their relevance, and their quite high level of acceptance, even if their plausibility can be disputed in particular instances. In short, legal practice functions as an elaborated system and corresponds to rationalistic principles to a high degree. These are principles which likewise inform scientific contexts and which are required in order to legitimise democratic forms of government.

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6 Du Plessis 'Interpretation'.
7 Du Plessis 'Constitutional dialogue' 685.
8 *Ibid* 687.
9 Felder *Semantic Battles – the Power of the Declarative in Specialized Discourse.*

Professionals who operate within the legal system make use of a certain language. Suppose a politically, socially, and intellectually interested citizen approaches this system, and the specialists who work there, with a seemingly simple question which I will formulate as follows: *How do legal professionals actually extract meaning from legal texts? Can the procedures underlying this process be described and depicted in a comprehensible model?*

What the hypothetical citizen in this scenario may find amazing is that neither legal professionals in general, nor legal theoreticians in particular, have a clear and simple answer to this question. Rather, in Germany one often hears answers like the following (synthesised and reformulated in my own words):

> There are two types of approach: *Wortsinnermittlung* and *Wortlautgrenze* [German for 'word-meaning determination' and 'wording boundary,' respectively], but neither of these is entirely convincing. The question does not play a central role in the foreground of legal practice. Legal theoreticians, however, have been fighting about it for the longest time and will probably continue to do so for quite a while.

If one instead approaches linguists and philologists, questions regarding meaning explication are not usually met with any simple and easily comprehensible answers from this circle of experts either.

I would now like to address this unsatisfactory state of affairs (which I have obviously put a rather fine point on here) with a proposal that can be summed up in advance as follows: 'The meaning is to be found in legal linguistic practices themselves; that is where meaning is inscribed!' In what follows, I would like to substantiate and expand on this answer, cryptic though it may seem at first glance.

4 Research question and aims

This contribution seeks to present a stringent theoretical-linguistic model of meaning constitution in legal practice and will concentrate on the question of how the practice of meaning construal established by legal professionals can be explained in a semiotically plausible way. It will show that legal validity is produced through a process of placing real-life situations and court cases in relation to legal texts by ascribing meaning to the legal texts and, moreover, that the meaning ascribed to the legal text – via the concrete situation at hand – is to be found in the intertextual web of jurisprudential textual work. Any concretisation of a given legal-text meaning that is undertaken in the context of a specific situation will always stand in relation to the respective case preparation and comparable real-life situations. With the ascription of legal-text meanings thus perspectivised from the real-life situation to the court case at hand, it becomes clear that the notion of legal certainty is by no means endangered if we dispense with the myths of *Wortsinnermittlung* and *Wortlautgrenze*, which are untenable from a theoretical linguistic and semiotic perspective.

The dispute within legal theory over whether meaning in law is ever ascertained or specifically produced essentially applies to legal lexicography as well, since making sense of legal texts in specific life situations (a fitting way to sum up the core activities of legal professionals) depends on lexicographers to capture and document this sense-making process by making explicit the ways of employing different forms of word usage, abstracting away from any individual context. In the exposition that follows, I will assume that working with an interweaving of different text types[10] constitutes the central part of a

10 Cf Busse 'Textsorten des Bereichs Rechtswesen und Justiz' and, regarding specialised text types in institutional languages, Hoffmann 'Fachsprachen und Gemeinsprachen'.

lawyer's professional activities.[11] Building on this basic assumption, I will answer the question of which characteristics of legal LSP can be formulated by attempting to describe the professional activity of jurisprudential textual work, above all with an eye toward meaning explication in law.

5 Legal language, at the interface between specialised and general language

The 'classic' functional requirements placed on LSPs are traditionally considered to be exactness, explicitness, and economy.[12] Aside from these, the comprehensibility of LSP texts is being cited more and more often as an additional functional criterion of late.[13] On the one hand, the research on LSP texts examines them with respect to the language system, focusing on the morphological, lexical, and syntactic domains; on the other hand, the use of LSPs is investigated in terms of their cognitive function as conceptual instruments, as well as their communicative function in conveying specialist knowledge in disparate circumstances of use.[14] In dealing with specialist communication, the linguistic domain of pragmatics – ie the performance of language acts, or the communicative actions of a person making specialist utterances[15] is studied. Aspects of comprehension processes, how texts function in terms of their effect, circumstances of language use, and the specification of addressees have increasingly come to augment the traditional range of research. With respect to forms of communication of specialist knowledge, there are three different constellations of addressees to distinguish between: *intra*disciplinary communication between legal professionals, *inter*disciplinary communication between lawyers and experts from other fields, and *extra*disciplinary communication between legal experts and (relative) laypeople. To varying degrees, each of these forms of communication employs the specialised language of law, or legal LSP.

As a rule, the transmission aspect is placed at the centre of attention whenever difficulties in comprehension or communication arise. In this context, legal LSP is sometimes touted as the prime example of incomprehensibility. With reference to standard jurisprudential definitions concerning the question of whether the language used in the legal field and the justice system is to be characterised as more specialised or more general in nature, the two following poles present themselves: on the one hand, Kirchhof casts doubt on the categorisation of legal language as LSP, because it is closely related to general language (legal experts prefer the term *colloquial language*) and because central legal expressions are at the same time words belonging to general language. Moreover, he cites as an additional reason the fact that it addresses itself to everyday people, by virtue of its social-regulative function.[16]

Contrary to this, legal expert Ulfrid Neumann defines legal language in an empirical sense as that LSP in which 'the laws, regulations, exegetical jurisprudence and other legal texts are actually formulated'.[17] While Neumann characterises legal language as an LSP

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11 Busse *Recht als Text. Linguistische Untersuchungen zur Arbeit mit Sprache in einer gesellschaftlichen Institution*; Felder *Juristische Textarbeit im Spiegel der Öffentlichkeit*.

12 Cf also Felder 'Juristische Fachsprache'.

13 Biere 'Verständlichkeit beim Gebrauch von Fachsprachen'; Roelcke *Fachsprachen*.

14 Hoffmann *Kommunikationsmittel Fachsprache – eine Einführung* 15ff.

15 Fluck *Fachsprachen. Einführung und Bibliographie* 31ff.; Hoffmann *Kommunikationsmittel Fachsprache*; Hoffmann 'Fachsprachen und Gemeinsprachen'.

16 Kirchhof 'Deutsche Sprache' 754.

17 Neumann 'Juristische Fachsprache und Umgangssprache' 111.

that largely avails itself of the 'vocabulary of the colloquial language', Müller, Christensen and Sokolowski similarly describe the language of law as a 'natural language interspersed with LSP elements'.[18] There is little divergence between these last two attempts at a definition, and they correspond with the prevailing notion of legal institutional language use in the field of forensic linguistics.

The thoughts presented above concerning legal language insinuate a sharp division between specialised language on the one hand and general language on the other.[19] This distinction and the accompanying problems cannot be dealt with here in depth. My notion of legal language and general language in the context of linguistic research should be viewed against the backdrop of legal and everyday knowledge frameworks[20] – a point of view that must be considered in regard to the metaphor that 'a constitution speaks'. Because after all, the constitution speaks in a ductus emanating from a constitutional-law background and the *zoon politikon* answers from a non-legal everyday conceptual framework. The divergent background knowledge and differing expectations of the respective interlocutors within the 'constitution speaks' model pose a fundamental problem.

The question under consideration here, as to how meaning can be explicated in concrete contexts, is immanent to problems of both specialised language and general language and will be explored here for both forms of language use. By 'general language' as an antipole to LSP, I mean the syncretism of a very far-reaching system of expression (which is not specifically marked, neither regionally nor socially) and an everyday and transmissive-semantic content system (ie not exceedingly specialised semantically to a given field, so that it is not reserved for a small group of experts but is also accessible to relative laypeople).[21]

6 Legal meaning on the basis of legal texts and (real-life) situations

The problem of differences in meaning (especially between LSP and general language) presents itself in a specific way to any lexicographer interested in the reconstruction of legal meanings in past and present contexts of use – particularly in the case of historical lexicography informed by a sense of duty toward the 'societal and scholarly exigencies'.[22] In this context, the following observation by Reichmann is of critical importance:

> Among the unassailable theoretical presuppositions in all of linguistics are the following: first, the notion that the lexical unit is to be regarded as systematically polysemous and, second, that each of the senses ascribed to it is to be placed in a semantic relationship with at least one of the senses that are ascribed to other lexical units.[23]

Against this backdrop, an explanatory model is to be proposed in the following sections to elucidate a working practice with respect to its processes of meaning production and meaning explication. The point of departure is to be a notion of jurisprudential textual

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18 Müller, Christensen and Sokolowski *Rechtstext und Textarbeit* 9.

19 Regarding the problem of where to draw the boundary between LSP and general language, cf Felder *Juristische Textarbeit* 91ff.

20 Busse *Recht als Text*; Felder *Juristische Textarbeit* 89ff.

21 Felder *Juristische Textarbeit* 93.

22 Reichmann *Historische Lexikographie. Ideen, Verwirklichungen, Reflexionen an Beispielen des Deutschen, Niederländischen und Englischen*.

23 *Ibid* 379 (translated from the German).

work[24] that conceives of law as a text-processing and text-transforming institution.[25] Building on this basic assumption, my aim is to answer the question of how the legal professional can produce meaning from words in contexts, how the legal theoretician can theoretically model this process, and how it can be possible for the non-lawyer citizen to take part in the communication at all, within the framework of the assumptions of this model.

In his Structuring Legal Theory paradigm, legal theoretician Friedrich Müller calls jurisprudential work with texts 'legal work'; lawmakers and appliers of the law (ie legal professionals) are called 'legal workers' in his book *Juristische Methodik* [Legal Methodology].[26] With these designations, the role of the jurisprudentially acting subject in concretising legal prescriptions – that is, in ascribing meaning – is emphasised. The model to be presented here subscribes to this view of matters. On the basis of legal texts, the language acts performed by legal workers will be placed front-and-centre in order to demonstrate an approach through which meaning explication in legal contexts can be modelled (based on prototypical forms of word usage, abstracted away from any given context). My research question thus centres on a theory of meaning with regard to legal practice.[27]

7 Two conflicting approaches: meaning determination versus meaning stabilisation

It is of theoretical interest and practical utility to reflect on how codified legal texts are placed in relation to social situations and realities, which they are supposed to regulate in some way or other. Generally speaking, this is done (as detailed by Busse[28] and Felder[29]) by ascribing meaning to written laws from the point of view of a concrete case at hand. The ascription of meaning is discussed in the legal studies literature according to various paradigms – there are two conflicting explanatory approaches, which characterise meaning ascription in different ways: one approach (that of Larenz) is based on meaning *determination* and speaks of the possibility of determining the verbal meaning in a legal text;[30] Klatt even goes so far as to speak of the 'objectivity of linguistic meaning'.[31] The other explanatory approach, developed within the paradigm of action theory, is based on a *stabilisation* of meaning and falls within the purview of linguistic pragmatics, as expounded by Busse,[32] Müller/Christensen/Sokolowski[33] and Felder.[34]

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24 Felder *Juristische Textarbeit*.
25 Busse *Recht als Text*. See similarly, Du Plessis 'Lawspeak as text…and textspeak as law: Reflections on how lawyers work with texts – and texts with them'; and Du Plessis *Re-Interpretation of Statutes* 1–18.
26 Müller *Juristische Methodik*.
27 Cf on this topic Christensen and Pieroth Rechtstheorie in rechtspraktischer Absicht. Freundesgabe zum 70. Geburtstag von Friedrich Müller.
28 Busse *Recht als Text*.
29 Felder *Juristische Textarbeit*.
30 Larenz *Methodenlehre der Rechtswissenschaft*.
31 Klatt *Theorie der Wortlautgrenze. Semantische Normativität in der juristischen Argumentation* 285.
32 Busse *Juristische Semantik. Grundfragen der juristischen Interpretationstheorie in sprachwissenschaftlicher Sicht*.
33 Müller, Christensen and Sokolowski, *Rechtstext und Textarbeit*.
34 Felder *Juristische Textarbeit*.

The proponents of the meaning *determination* approach subscribe to the thesis of the 'objectivity of linguistic meaning,'[35] arriving at the conclusion 'that, contrary to many critics, linguistic meaning is capable of bearing the onus placed on it for the objectivity of legal decisions'.[36] A model such as that of meaning determination, based on the notion of a predetermined standard meaning that the authors of a constitution have established, cannot be reconciled with Du Plessis's 'a constitution speaks' approach, because modelling the rule of law as a dialogue between the constitution and citizens (as suggested by Du Plessis) insinuates that the participants in the discourse have not fixed their positions statically but negotiate them through ongoing proceedings.

Those researchers who argue for a *stabilisation* of meaning, approach the problem from a semiotic and language-pragmatics standpoint by identifying patterns of verbalisation and language acts. Such models are therefore fully compatible with the idea that 'a constitution speaks'. This approach describes protagonists in the legal field against the backdrop of concrete communicative situations; on the one hand, this highlights how language is used to gain access to the states of affairs that are to be constituted and the perspectivity[37] immanent to them (ie the semiotic plane, with its semantic battles over adequate constructions of reality). An analysis based on language acts or action theory, on the other hand, enters the fray earlier, at the point where language is exerting its influence on the legal processing of reality – ie in 'taking a normative stance on a situation' (as Thomas Seibert puts it).[38] It can be described as the 'construction of reality' in law. In this context, legal expert Bernd Jeand'Heur speaks of the 'preparatory function' that appertains to the use of legal LSP texts, which is what translates the 'case' into a legally relevant 'state of affairs' in the first place, that is, *prepares* it.[39] Current research subsumes these activities within the category of action aspects, with areas of investigation including the *determination of states of affairs*, *legal classification of states of affairs*, and *deciding*.[40] Legal professionals accordingly classify a certain number of characteristics of real-life situations as legally relevant with respect to the state of affairs that is to be constituted and thus designate them as significant for the situation or case.

In order to legitimise declarative and assertive language acts in the legal field, not only expert knowledge of the law but also knowledge of language acts in general is required. Knowledge of these matters thus becomes a central part of society's understanding of the law. We gain access to knowledge via the language of a speech community. And there lies the basis for the social nature of language: namely, that the people who belong to a certain cultural grouping have the same linguistic inventory at their disposal. Signs are thus to be

35 Klatt *Theorie der Wortlautgrenze* 285.
36 *Ibid* 284.
37 Köller *Perspektivität und Sprache. Zur Struktur von Objektivierungsformen in Bildern, im Denken und in der Sprache*.
38 Seibert *Aktenanalysen. Zur Schriftform juristischer Deutungen* 16.
39 Jeand'Heur 'Die neuere Fachsprache der juristischen Wissenschaft seit der Mitte des 19. Jahrhunderts unter besonderer Berücksichtigung von Verfassungsrecht und Rechtsmethodik' 1292.
40 Felder *Juristische Textarbeit*; Li *„Recht ist Streit". Eine rechtslinguistische Analyse des Sprachverhaltens in der deutschen Rechtsprechung*; Vogel 'Das Recht im Text. Rechtssprachlicher Usus in korpuslinguistischer Perspektive'; Luth *Semantische Kämpfe im Recht. Eine rechtslinguistische Analyse zu Konflikten zwischen dem EGMR und nationalen Gerichten*.

thought of as collective units. It follows that the linguistic nature of knowledge constitution has as a consequence the social nature of language.[41] What this means for a socially informed view of language, and the scientific study of it, is that language and knowledge are central power factors and are constitutive for the development of the world; in them, societal conceptions of justice and forms of individual self-realisation within societies converge in a highly charged environment. In the system of written law, not only the macrostructures of power, but the status of its bearers, their prerogatives and liberties as well as the standards for, or authority of their (language) actions, are encoded. Texts in operation are thus the point of departure for any forensic-linguistic analysis. In other words, it is in the ability to act by means of legal language that the possibility of participating in a constitutional system lies. And this thought refers both to speaking legal language and to understanding it. Therefore, we need to be able to explain, in a theoretically plausible way, how comprehension in the legal field is supposed to work. Ultimately, a plausible explanation for how comprehension comes about in the legal field is a prerequisite for the rule of law and the loyalty of a citizen towards the law.

8 Unlimited semiosis in the legal field as an explanatory model for legal meaning explication[42]

At the centre of interest for the present work is the question of how legal professionals ascribe meaning to codified texts. Having described the problem of how legal meaning is constructed in paragraph 7 above, I will now suggest semiosis as a theoretical framework for solving that problem. Meaning ascription in legal practice takes place within the paradigm of semiosis, by ascribing signs to signs (and not by simply extracting the meaning out of legal texts). I will therefore join Hundsnurscher in taking a pragmatic approach to lexical semantics.[43] On this view, the meaning of a word is not given *a priori*, but is nailed down context-specifically with regard to the current *in situ* sense on the basis of previously encountered uses and the recognised regularities or rules of word usage (Wittgenstein's language game). We make sense of the world (as Hans Hörmann[44] puts it) by assigning a sign to a position along the spectrum of possibilities for using that sign – ie choosing a pragmatic perspective within pragma-semiotic textual work.[45]

In what follows, the paradigm of theoretically unlimited (and in legal practice, temporarily limited) semiosis will be adduced as an explanatory model of field-specific meaning stabilisation.[46] In the field of semiotics, 'semiosis' refers to the process by which something functions as a sign: 'Semiosis is the triadic "action of the sign," the process through which the sign exerts a cognitive effect on its interpreter or quasi-interpreter'.[47] Because it is

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41 On this point, see Felder and Müller *Wissen durch Sprache. Theorie, Praxis und Erkenntnisinteresse des Forschungsnetzwerks, Sprache und Wissen'*.

42 The thoughts presented here are drawn, in part, from Felder 'Unendliche Semiose im Recht als Garant der Rechtssicherheit'.

43 Hundsnurscher 'Pragmatische Wortsemantik. Zum pragmatischen Hintergrund einer gebrauchstheoretisch orientierten lexikalischen Semantik'.

44 Hörmann 'Der Vorgang des Verstehens' 25.

45 Cf Felder 'Sprache – das Tor zur Welt!? Perspektiven und Tendenzen in sprachlichen Äußerungen'; Felder 'Pragma-semiotische Textarbeit und der hermeneutische Nutzen von Korpusanalysen für die linguistische Mediendiskursanalyse'.

46 On this point, cf. also the comments in Felder 'Unendliche Semiose im Recht'.

47 Nöth *Handbuch der Semiotik* 62. Cf. also Peirce *Collected Papers* 5.472, 5.484.

never concluded, this process is thought of as infinite in theory, since every sign becomes the interpretant of another sign (resulting in the unlimited substitutability of signs for signs).[48]

Following Charles Sanders Peirce, what is meant by 'unlimited semiosis' in linguistics is the fact that the sign in a narrow sense, or rather the external form of the sign (which Peirce calls the 'representamen') can only be explained by interpretants in the sense of other linguistic signs – in short: in order to explain the meaning of one word, you need a second word, and in order to illustrate the meaning of the second, you need yet another. Nöth speaks of an 'unending process of semiosis'[49] – or infinite semiosis, because while the process of semiosis can be interrupted, it can never be concluded. For example, the process is interrupted by every court decision or administrative act, in the sense that the stabilisation of meaning entails substantial consequences for the parties involved in the proceedings (temporarily limited semiosis). From both a procedural and a theoretical standpoint, every legally valid stabilisation of meaning is carried forward by the institutions in charge through the intertextual written promulgation of conventionalised forms of word usage. For one thing, its validity is confined to the individual case under consideration (provided no legal challenges or appeals are mounted) and can be confirmed or modified by comparable cases and their respective stabilisations of meaning. Therefore, with regard to the process of semiosis, it must be specified that in legal practice, it can be temporarily limited in its effect, while in terms of legal and linguistic (and ultimately also lexicographical) theory, it is unlimited.

It follows that meaning is neither a static affair, nor can it be ontically hypostatised; meaning explication takes place through the semiotic interpretation of signs (ie by interpreting linguistic signs and strings of signs in texts with reference to their value within the web of the text).

To place what has been said thus far in relation to Du Plessis's 'a constitution speaks' and formulate it more pointedly for constitutional discourse: words *per se* have no meaning; rather, we as speakers have experiences with how certain words have been used in varying cotexts, contexts, and interactions. Consequently, we as speakers (whether experts or laypeople) make meaning with words – and we do so on the basis of our experiences with linguistic usage, as well as our prior knowledge through interaction-specific contextualisation. In the process, diverse forms of knowledge at varying degrees of specialisation have a role to play, and they manifest themselves cognitively in the knowledge frameworks of the acting subjects. Here, 'specialisation' is to be understood as a gradual phenomenon on a continuum between the poles of *rich in technical features* and *poor in technical features*.[50]

Peirce's approach to semiosis is not compatible with *Wortsinnermittlung* or *Wortlautgrenze* approaches. Peter Schiffauer[51] and Dietrich Busse[52] have investigated the concept of the *Wortlautgrenze* and demonstrated how tenuous its distinction between the

48 Cf also Eco's thoughts on this topic, in which he deals with abduction and the process of unlimited semiosis (Eco *The Limits of Interpretation*).

49 Nöth *Handbuch der Semiotik* 64.

50 On this point, see Kalverkämper 'Gemeinsprachen und Fachsprachen – Plädoyer für eine integrierende Sichtweise' and Becker and Hundt 'Die Fachsprache in der einzelsprachlichen Differenzierung'.

51 Schiffauer *Wortbedeutung und Rechtserkenntnis*.

52 Busse *Recht als Text*; Busse *Juristische Semantik*.

Bedeutungskern (core meaning) and *Bedeutungshof* (peripheral meaning) is. In the process, it became clear how illusory the notion of the judge as the 'mouthpiece of the law' is, in the sense of a 'subsumption automaton'.[53] Schiffauer reaches a radical verdict: 'When, in interpreting a law, the meaning of a word falls into doubt, the semantic argument can no longer be employed.'[54] Schiffauer's grappling with the problem of delineation culminates in the following thesis: 'The terms "interpretation in conformity with the constitution" and "analogy" have no specific content to justify them in the context of the stated grounds for court decisions.'[55] The position taken by Christensen seems most convincing from a linguistic point of view. In his opinion, the idea encapsulated in the term *Wortlautgrenze* is not an absolute but a relative quantity which, depending on the situation, 'requires the legal worker, at any given point, to give precedence to that argument which adheres more closely to the text of the law or, conversely, to grant to the element that diverges farther from the text of the law only a specifying function, and not an overriding effect'.[56]

9 Semiosis as a model for meaning explication: example scenario based on an indeterminate legal concept

The following question now arises with regard to jurisprudential meaning explication within the paradigm of unlimited semiosis: how can this sort of meaning stabilisation in the legal field be adequately modelled?

In characterising the stabilisation of legal meaning, the paradigm of unlimited semiosis presumes that we can only delimit the meaning of an expression by means of other linguistic signs. Since this process is infinite, Nöth – as mentioned above – speaks of an 'unending process of semiosis'[57] – or unlimited semiosis, because while the process of semiosis can be suspended, it can never be concluded. Accordingly, this process of semiosis is interrupted at an earlier stage in everyday communication than in specialist communication, where the process of specifying meanings further by employing additional signs as interpretants is part of the self-assurance process of both legal practitioners and the scientific community.

The meaning of legal texts in relation to a given case can be objectivised by degrees, even though, as a rule, not all of those who are subject to the law will agree as to the stabilised meaning of the legal text in relation to a concrete case. Nevertheless, stabilisations of meaning have intersubjective validity. The practice of discursive negotiation in concretising laws is like a never-ending language game; even the decisions handed down by supreme courts or federal constitutional courts can be placed in a new perspective years later – it is then a question of reformulations with regard to similar cases or types of case. This fact which demonstrates the relevance of unlimited semiosis as an explanatory model is reassuring since it makes it possible to take changing societal values into account – if only with a certain time lag and too late for certain affected parties – as long as a discursive debate takes place.

In the context of this imputed underdetermination the question arises for the paradigm of theoretically unlimited semiosis as to how the legal practice of meaning explication – conceived of as meaning stabilisation at a certain point in time – can be assisted by linguistic

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53 Busse *Juristische Semantik* 46ff.
54 Schiffauer *Wortbedeutung und Rechtserkenntnis* 103.
55 *Ibid* 254.
56 Christensen 'Das Problem des Richterrechts aus der Sicht der Strukturierenden' 91.
57 Nöth *Handbuch der Semiotik* 64.

methods and, of late, (semi-automated) corpus-linguistic techniques. This with an eye toward techniques that can help to lay bare ambiguous legal terms with respect to their conflict potential and the underlying attempts at fixing the meaning, while taking the enormous quantity of intertextually linked texts into consideration. The question for investigation thus becomes: how can the discursive formulations and negotiation processes in the legal field be captured and described?

To objectivise meaning postulates with respect to legal texts in relation to concrete cases, one needs analytical techniques that bring the central points of dispute to light economically, in terms of the effort required. In the legal context the question arises of how to efficiently investigate the differing ascriptions of meaning or jurisprudential points of dispute using large text corpora. I will conclude by illustrating, based on an example scenario, how such discursive conflicts can be identified with discourse analysis, employing semi-automated methods to reveal the jurisprudential usages of the German expression *Würde* (dignity, worth). For purposes of defining terms, the study in focus demonstrates the legally realised contextualisations as exemplified by German Federal Constitutional Court decisions (building on an analysis by Vogel).[58] I will show, in light of the vague meaning of the term 'human dignity', how its meaning can be ascertained through a concrete examination of the many ways in which the word *Menschenwürde* (human dignity) has been used.

With the help of computers, we can review the many different verbal contexts in which the expression *Menschenwürde* has occurred in a large corpus of legal language. Viewing the resulting data within the paradigm of semiosis allows us to catalogue the meanings that are ascribed to the expression *Menschenwürde* in concrete legal language use by lawyers and other legal professionals. By analysing the different verbal contexts within which *Menschenwürde* appears, I will thus provide a practical example of the abstract idea of semiosis.

Friedemann Vogel tests the investigatory potential of semi-automated analytical instruments for comprehending textual and legislative work in the legal field on the basis of 4,238 German Federal Constitutional Court decisions in which the multi-word term *Würde des Menschen* ('dignity of the human being,' Art. 1, Par. 1 of Germany's Basic Law) or the compound *Menschenwürde* appears, as an example of an indefinite legal term. With this method, he seeks to shed light on jurisprudential usages of the expression *Würde*, tracing the process of defining the term by demonstrating the contextualisations realised in the legal field. 'The focus is on language patterns recurring in large text corpora, as tracks in the sediment of exegetical jurisprudence.'[59] By focusing on the immediate environment (= the cotext) of the term *Würde des Menschen* or *Menschenwürde* (investigating the contextualisation by means of cotext analysis), specific details regarding the use of these words come to the fore – for example, predications (intensional and extensional ascriptions of characteristics) and attributions.

Our guiding interest crystallises mainly in the question 'in which recurrent linguistic formations (on the expressive side) do the expressions enshrined in Art. 1, Par. 1 of Germany's Basic Law *Würde* [*des Menschen*] or *Menschenwürde* occur in the corpus?' Based on the language patterns thus identified, the meaning specifications can be explicated by focusing on the concrete discourse context in large text *corpora*.

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58 Vogel 'Das Recht im Text'.
59 *Ibid* 315.

Vogel works out how *Würde* is specified through ascriptions within legal discourse with respect to (1) its bearers, (2) the preservation and maintenance of the law, as well as a regard for the person as a human being in the face of legal restrictions, and (3) violations of this law. Moreover, he outlines the attributes in relation to those protagonists who are entitled to legitimise *Würde* in the discourse and 'certain specifics of cases (or resolutions) that are represented at a frequency greater than chance'.[60] With this corpus-linguistic method the theoretical concept of semiosis is given a practical application in legal discourse where it can help to flesh out the notion that 'a constitution speaks'.

If such an analysis also takes into consideration the three fundamental types of linguistic act which are of central importance in any legal communication – namely, the language act of *identifying the state of affairs*, the act of *legally classifying the state of affairs* (ie assessing the case under preparation in light of the relevant legal texts) and third the act of *deciding*[61] – then the process of semiosis as a method for meaning explication can be described more precisely as follows: The potential of a corpus-linguistics-inspired approach to forensic linguistics within the paradigm of unlimited semiosis,[62] which takes into consideration the three types of language act[63] mentioned above (*identifying the state of affairs*, *legally classifying the state of affairs,* and *deciding*) lies:

- 'in a corpus-guided co(n)text disambiguation of jurisprudential legal expressions, which takes seriously the Wittgensteinian premise that "the meaning of a word" – and thus also of any segment of a legal text whatsoever – is "its [rule-bound] usage in the language" (Wittgenstein (1984))'[64] and analyses the performance of jurisprudential textual work in light of the three types of language act;
- 'in the transparent traceability of how legal states of affairs or norms are constituted by means of a semi-automated structuring of the data; and finally,
- in facilitating quantitative (macrosystematic) and qualitative (microsystematic) analysis and, thus, the relativisation of individual text passages with systematically recurring language patterns across a large quantity of text'.[65]

I hope that the above has sufficiently illustrated my purpose; the goal is to demonstrate a semantically consistent approach that is compatible with the basic assumptions of semiotics. Approaches based on determining meaning as described above (such as theories of *Wortsinnermittlung* or *Wortlautgrenze*), however, contradict semiotic principles. The model presented here aims to make the idea plausible that semantogenesis is negotiated through ongoing proceedings in the legal field and it can easily be reconciled with Du Plessis's assertion that 'a constitution speaks'. This model of meaning explication through processes of semiosis in the context of legal communication thus constitutes a refinement describing more stringently how legal LSP functions.

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60 *Ibid* 327.
61 Cf Felder *Juristische Textarbeit*, Li *„Recht ist Streit"*.
62 Cf the volume of basic research on corpus pragmatics by Felder, Müller and Vogel *Korpuspragmatik*.
63 Cf Felder *Juristische Textarbeit*); Li *„Recht ist Streit"*.
64 Vogel 'Das Recht im Text' 322, with reference to Wittgenstein L *Philosophische Untersuchungen* § 43.
65 *Ibid*.

10 Conclusion

The aim of this chapter has been to offer proof that the concept of semiosis (that every sign becomes the interpretant of another, with unlimited substitutability of signs for signs) which stems from the field of semiotics can close the gap in the theory of how meaning comes about in the legal field without opening a new gap of legal uncertainty in the way legal theory explains legal practice. This approach to meaning explication corresponds with Du Plessis's idea that 'a constitution speaks' and fine-tunes it as it were because the dialogue between constitution and citizens comprises a never-ending process with respect to specifying and adapting the text of the constitution which as a raw text is always in need of a specific fulfilment or fine-tuning depending on the circumstances at hand, and this has to be negotiated discursively.

And so, according to the view outlined here, the ascription of meaning to legal texts is a temporary stabilisation in the process of semiosis. The ascription of meaning can be calculated and anticipated within a certain knowledge framework.[66] To this extent, it thus becomes possible to dispense with the fiction of inferring the meaning of laws without calling legal certainty into question. The fiction goes as follows: in the ductus of the container metaphor, legal professionals only take out of the legal text what the lawmakers themselves put into it. Contrary to widespread fears of legal uncertainty (due to the judge no longer having the status of the 'mouthpiece of the law'), dispensing with this semiotically untenable assumption will do just the opposite: it will reinforce the idea of legal certainty (conceived of as the certainty vouchsafed by the legal system and jurisprudence).

The implications of the 'word-container metaphor' – ie the simplistic and misguided notion that the text producer (for example, the legislature) 'packs' meaning into an expression which is then 'unpacked' by the text recipients (eg those subject to the law, or more narrowly legal professionals) in a 1:1 ratio – suggest to the law's addressees a supposed neutrality of language, which can range all the way to the perception of objectivity, in the sense of a clearly realised will on the part of the legislative body. The metaphor alludes to a uniform automaticity in comprehension and effect of the legal text from the perspective of the lawmaker as text producer, abstracted away from any given recipient, and ignores aspects of linguistic perspectivity and societal power and interest relations. *In this way, things are attributed to the medium of language, with its blurred outlines, that it is not actually capable of.*

At the same time, the motivational force of a reference within the text of a law is expected to have a legitimising effect in terms of the rule of law (the linguistic usage argument) – an expectation to which the medium can only do limited justice under conditions of suboptimal determinacy. In the receptive processing of (legal) texts, it is therefore necessary to stress the potential for vagueness and the poor determination or underdetermination of language and the limited predictability of the repercussions legal texts will have for legal professionals.[67] As an extension of traditional hermeneutics, categories of linguistic pragmatics such as the *question of addressees, prior knowledge of text producers and recipients, polyfunctionality, interpretation of situations, meaning explication* and *intertextuality* offer considerably more clarity, against the backdrop of varying discourse experiences and forms, about a process which can only be apprehended with difficulty.[68]

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66 See eg Busse *Recht als Text* 36ff.

67 Cf Wolski *Schlechtbestimmtheit und Vagheit. Methodologische Untersuchungen zur Semantik* as well as Pinkal *Logik und Lexikon. Die Semantik des Unbestimmten*.

68 Felder *Juristische Textarbeit* 220ff.

Dispensing with the semiotically untenable assumption of *Wortsinnermittlung* in the framework of the container metaphor thus represents a reinforcement of the idea of legal certainty. It enables us to explain in theory what has long been the case in practice: namely that those who are subject to a legal prescription cannot predict with certainty how a real-life situation adjudicated in a court case will be placed in relation to a legal text and how the case will then be decided with reference to argumentation that adheres more closely to the text of the law versus that which diverges farther from the text of the law. This is because the process sketched above, of relating the case at hand to a legal text, leaves room for vagueness. The idea of some versions of legal positivism in contrast – which assumes there is one and only one interpretation – dangles before the eyes of those subject to the law a kind of objectivism that does not really exist in this form, which leads to disillusionment when, in practice (where the principle that 'law is contention'[69] obtains), the case is decided otherwise than hoped.

And this brings us back to the 'semantic battles' in law: reflections on the role of language in legal studies and in legal practice can look back on a long tradition. As a successor to the simplistic, instrumental conceptions of language that underlie legal positivism with its untenable and illusory assumptions of objectivistic meaning determination from legal texts, the view has been propounded here that law takes the form of a process. The medium of negotiation for this process is language – more precisely, legal language. This fact is particularly relevant where constitutional law is concerned. In particular, the discursive or 'dialogic' confrontations and jurisdictional disputes between courts as well as those between legal professionals and laypeople, are considered prime examples of discursively negotiated power plays and within the paradigm of 'semantic battles' they can be formulated as follows: what is meant by 'semantic battle' is the attempt on the part of different discourse participants to assert certain linguistic forms as an expression of specific, interest-driven patterns of action and thinking through the discursive process of negotiation within a knowledge domain such as law. The coining and asserting of specific technical terminologies and the fixation of that which appears to be given *a priori*, but is in reality a state of affairs that first had to be constituted linguistically, only then becomes negotiable. When viewed in this way, they represent the attempt to structure the world or a segment of the world, from a central perspective, as a systemic space from one specific point of view.

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69 Cf Li *„Recht ist Streit"*.

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