

Introduction

What follows is an exercise in excessive self-indulgence¹. How does it come about ?

I must answer, in semio-narrative terms, a “contrat” (in the semiotic, not legal sense) with Eric Landowski. I would never have contemplated it otherwise. From this derive the necessary “modalities”, of *vouloir, savoir, pouvoir, devoir*. But *vouloir, savoir, pouvoir, devoir quoi ? Ecrire ?* Not sufficient. To publish in *Actes Sémiotiques* (and thus to acquire the badge of a “real” semiotician, however undeserved) ?² What *hutspah* !³ And if Landowski is the sender of these modalities, and if I, as receiver, accept the role of Subject, can we be sure that both of us have invested these modalities in the same way ? To do so, would surely entail adoption of far too mechanical a model of communication. Landowski has made quite clear what he wishes to achieve by this exercise, and what he thinks I can do :

Very roughly speaking, it would consist in showing why and how semiotics has been relevant and profitable for the development of your approach to “law” in the broadest sense. And the other way round, it would also show how the diversity of legal (and connected) objects and problems you have had to deal with led you to enrich the standard Greimasian model in various respects.

I may have doubts about some of this, and indeed, as a septuagenarian with a daunting list of (self-contracted) research projects which I would like to complete while I still have any mental competence left at all, my normal reaction to requests to deviate from this agenda has become

¹ Even going beyond my overview in “Legal Semiotics and Semiotic Aspects of Jurisprudence”, in A. Wagner and J.M. Broekman (eds.), *Prospects of Legal Semiotics*, Dordrecht, Springer, 2012, pp. 3-36 (originally written in 1990, and barely updated, for a different project). More recent, very partial, anticipations of the present text may be found in two Festschriften : “Trust in(g) Eric”, in A.C. de Oliveira (ed.), *As interações sensíveis : Ensaios de sociosemiótica a partir da obra de Eric Landowski*, São Paulo, Estação das Letras e Cores e Editora CPS, 2013, pp. 81-100 ; “Philosophy of Law : Secular and Religious (With Some Reference to Jewish Family Law)”, in Alison Diduck, Noam Peleg and Helen Reece (eds.), *Law in Society : Reflections on Children, Family, Culture and Philosophy. Essays in Honour of Michael Freeman*, Leiden, Brill, 2015, pp. 45-62.

² I have to confess not to have regularly followed the Greimas circle’s semiotic literature since I completed *Semiotics and Legal Theory*.

³ Yiddish derived from Hebrew, almost untranslatable : a mixture of *hubris*, insolence, arrogance, but often with a humorous, semi-approving connotation. A classic narrative typification (see below) was given by Leo Rosten : “that quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan.”

negative. And yet, on this occasion, I accept. And with one addition: I hope that readers will appreciate that very little of what follows should be of interest *only* to lawyers : that, after all, would entail a rejection of the basic claim/ambition of Greimasian semiotics, to develop a model of potentially universal application.

My explanation of my motivation in undertaking the task illustrates the importance of one minor addition I have sought to add to the classical Greimasian agenda : what I have called the “narrativisation of pragmatics”. In short, it is the history of my relationship with Landowski, and the modalities attached to that relationship, which alone (and even to the exclusion of potential academic “impact”) explain my undertaking this task. Our e-mail exchanges about this are simply texts, *énoncés*. They cannot be considered in isolation from the respective *actes d'énonciation* — which leads to the pragmatics of the exchange.

Who is this Sender, and how have I constructed him ? On the basis of personal experience, of course. But that, too, has to be narrativised in order to make sense. That he has been a Helper, colleague and friend for many years, someone without whom I would have sunk without trace in the Greimasian sea, cannot be excluded from the sense I made of the written invitation, and my reaction to it. But even the categories of Helper, colleague and friend are not sufficient on their own. There are many different types of Helper, colleague and friend. To choose which, we have to select from the available range of narrative typifications, each accompanied by its particular tacit social evaluations (on this, see further below). Moreover, it is these narratives which permit us to invest, appropriately, the modalities of *vouloir*, *savoir*, *pouvoir*, *devoir*. What kind of *vouloir* ? To publish, and increase “scientific knowledge” ? Or to re-engage with a friend, and reciprocate previous kindnesses ? What kind of *savoir* ? That apparently attributed to me in the correspondence, or some kind of enhanced self-knowledge ? What kind of *pouvoir* ? The assurance of publication, or the opportunity to re-engage and reflect more deeply ? What kind of *devoir* ? Not legal, for sure, nor even moral. Rather, the kind of obligation which is inherent in a close interpersonal relationship (in theological terms, more like a covenant than a contract).

And so, despite an initial reluctance to indulge in retrospective academic autobiography (or *apologia pro vita mea*, however charged with historical scepticism, and sensitivity to the reflexive application of semiotics to the present text), I have to begin at the (academic) beginning.

My background is that of an academic lawyer, whose legal education (1962-65) was unthinkingly positivist. This meant, in those days, that law (English law, at least) was a special, entirely autonomous / independent set of techniques (the “artificial reason of the law” : Sir Edward Coke⁴), so that “legal sense” was not dependent upon understandings outside the law (unless the latter were expressly incorporated) ; that statutes were comprehensive, so that anything not stated had no legal force⁵. On the completion of my undergraduate degree, I was presented with the opportunity of doctoral study with an exceptional and inspirational scholar in Jewish (and Roman) law, David Daube, a man whose interests spanned law, religion and literature, who manifested and encouraged in others originality in

⁴ See J.E. Bickenbach, “The ‘Artificial Reason’ of the Law”, *Informal Logic*, 12/1, 1990, pp. 23-32, at 23 for the full quotation, from *Prohibitions del Roy* (1607) 12 Co. Rep. 63.

⁵ And thus that “if ...” really meant “if and only if ...”. See further n. 106, below.

thinking without necessarily adhering to conventional methodologies of research and the reading régimes conventionally associated with particular disciplines. Insofar as his and my work at that time challenged the positivist paradigm, it was at the implicit level. However, working with Daube made me realise that originality, diversity and controversy were possible within the study of systems of religious law, and (a fortiori ?), secular law. But this phase of my research, reflected also in my early articles (the earliest, in comparative legal history⁶), was entirely innocent of semiotics⁷.

But where was one to find the tools and the epistemological foundations for work which might challenge the positivist paradigm? In the late 1970's I began to explore different forms of structuralism, with the aid of a research grant from the (UK) Social Science Research Council⁸. I was able to meet Chomsky (twice), who was receptive and helpful in relation to the nature of the universalist claims of his transformational grammar. I was also able to meet Claude Lévi-Strauss, who was disinterested, despite the relevance of his structural anthropology to normative social customs. But the most direct "structuralist" engagement with legal theory which I found was the "Analyse sémiotique d'un discours juridique" by Greimas and Landowski⁹. I requested an audience with Greimas, which was granted. And so I made my way to the seedy office in Rue Monsieur-le-Prince, and attempted to initiate a discussion. Greimas quite quickly excused himself and left me (a non-smoker !) to be rescued by Landowski. It soon became apparent that our encounter would go far beyond the demands of conventional politeness. Ultimately, it resulted in my publishing *Semiotics and Legal Theory* (1985)¹⁰, and in the foundation of the International Association for the Semiotics of Law and its bilingual journal, the *International Journal for the Semiotics of Law / Revue Internationale de Sémiotique Juridique* (with Landowski as its first Editor, not only assisting with quality of content but also making frequent improvements to the English of many "native" English speakers).

1. Legal vs semiotic positivism

Taking account of debates within the positivist tradition in legal theory, and the extent to which they engaged (or failed to engage) with linguistics, anthropology and continental structural semiotics, I sought in *Semiotics and Legal Theory* to achieve three principal objectives, within the framework of a broader discussion of linguistic and jurisprudential approaches to law : 1) to expound the application of Greimasian semiotics to law as reflected in the "Analyse sémiotique d'un discours juridique" of Greimas and Landowski ("G/L") ; 2) to compare the linguistic and epistemological assumptions of this

⁶ The very first : "Evolution and Foreign Influence in Ancient Law", *American Journal of Comparative Law*, 16, 1968, pp. 372-390, on a topic to which I later recognized the relevance of developmental psychology: as in the publications in n. 75, below.

⁷ See particularly my doctoral thesis, published as *Theft in Early Jewish Law*, Oxford, The Clarendon Press, 1972 ; and *Essays in Jewish and Comparative Legal History*, Leiden, E.J. Brill, 1975, mainly reprinting articles published between 1971 and 1974.

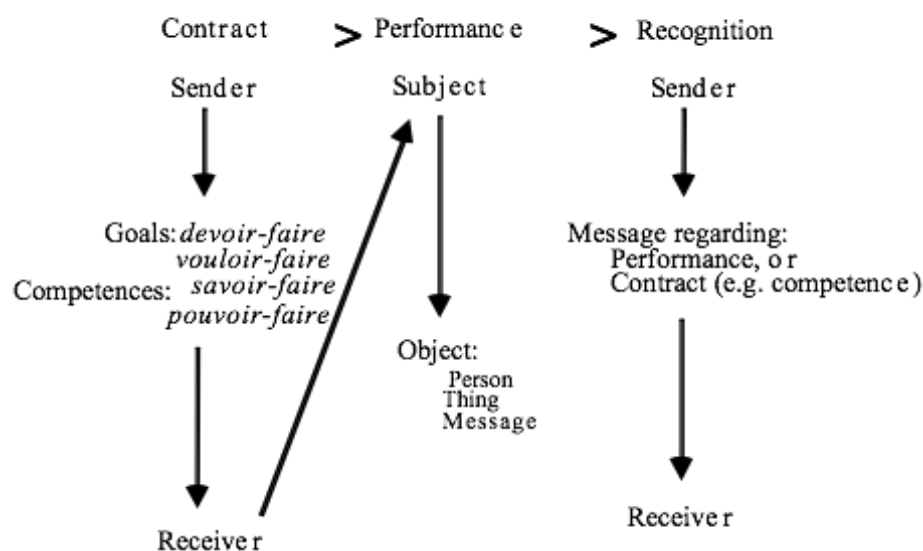
⁸ This generated a 60-page Occasional Paper, "Structuralism and Legal Theory", Liverpool Polytechnic, Department of Law, 1979, Occasional Paper 20 ; a pdf is available on request ; also two early papers on the application of structuralism in the legal context : "Structuralisme et 'sources du droit'", *Archives de Philosophie du Droit*, 27, 1982, pp. 147-160 ; "Structuralism and the Notion of Religious Law", *Investigaciones Semióticas*, 2/3, 1982-83, pp. 1-43 (Carabobo, Venezuela).

⁹ Published in A.J. Greimas, *Sémiotique et sciences sociales*, Paris, Seuil, 1976, pp. 79-128.

¹⁰ *Semiotics and Legal Theory*, London, Routledge & Kegan Paul, 1985 (paperback ed. 1987; reprinted Liverpool, Deborah Charles Publications, 1997).

approach with those of other leading (mainly positivist) legal philosophers¹¹; 3) to draw some conclusions for legal philosophy from the application of a semiotic, rather than a traditional legal positivist approach. Each of these deserves some explanation.

1. The “G/L” text had been produced in response to a commission from the Paris Chamber of Commerce, seeking interdisciplinary reactions to a draft new law on “sociétés commerciales” (roughly equivalent to “companies” in English). One objective of the approach of “G/L” was to highlight “production juridique”, the discursive process of naming in the text by which objects were accorded legal status — here, both the société commerciale itself and the very role of the legislator. In separate chapters, I discussed the application of the Greimasian view of both the paradigmatic and syntagmatic levels of the text, showing how the (universally claimed) “structures élémentaires de la signification” (actants, fonctions, etc.) were manifest in even a legal text like this, both through various applications of the semiotic square (I added a comparison with the hexagon of Blanché) and through the narrative grammar of contract, performance, recognition for which I later used the following diagram¹².



But this presented a difficulty, in that the “faire” anticipated in the text for both the société commerciale and the legislator could only occur through processes of communication outside the text — expressed through the notion “référence virtuelle”. Indeed, I have come to view the most important single word in the title of this essay (“Analyse sémiotique d’un discours juridique”) as “un” : legislation is only one form of legal discourse¹³, and in practice acquires significant meaning only in relation to activity (including, but not restricted to, judicial activity) outside the text. For comparable reasons, the “American Realist” school of jurisprudence regards legislation as a source of law only in an historical,

¹¹ See further n. 16, below.

¹² Apparently my own ; at least, I have not been able to locate a source from which it may have been taken.

¹³ See further my “On the Semiotics of Legislation”, in Hanneke van Schooten (ed.), *Semiotics and Legislation. Jurisprudential, Institutional and Sociological Perspectives*, Liverpool, Deborah Charles Publications, 1999, pp. 5-26.

rather than a legal, sense : it is, for them, only what courts actually do with those legislative texts that counts as law¹⁴.

That my exposition fell on stony ground was probably due to a number of factors. On the one hand, it added little, if anything, to what Greimasian semioticians already knew, and few of them were interested in applications to law ; on the other, it was too abstract, difficult and apparently reductive for lawyers : it focused on those formal elements within the text which are necessary conditions for the construction of *any* (including legal) sense, even though, as I pointed out (p. 138), Greimas claimed that these general categories derived from social structure. I may add that it was only some time after I published *Semiotics and Legal Theory* that I was able to access a copy of the draft *Loi sur les sociétés commerciales*, in reaction to which the “Analyse...” had been written. I was astonished at what I found : an enormous text of around 1000 articles — only two of which were actually cited in the “Analyse ...”. Of course, G/L did not set out to provide a commentary on the text, or indeed to comment on its substantive content or policy (whatever may have been the intentions of the Paris Chamber of Commerce). But when (however rarely) lawyers look to semioticians, they expect assistance (if not a magic wand) in the process of (“correct”) interpretation¹⁵. They do not understand that the primary task of semiotics is not exegesis or hermeneutics, but rather to understand the underlying processes by which an already-established interpretation “makes sense”. Occasionally, added meaning may, by that process, actually “enrich” (or distort) the text, but this will be by structural rather than semantic analysis, and few lawyers have any conception of interpretation beyond their own version of semantics.

2. The four chapters in *Semiotics and Legal Theory* dealing with the “Semiotic Presuppositions of Legal Theorists” are devoted to four leading legal philosophers, all regarded, with some qualifications, as “legal positivists”.¹⁶ But they each have different foci, which I distinguished in the very titles of the chapters : Hart and the Semiotics of Legal *Rules* ; MacCormick and the Semiotics of Legal *Doctrine* ; Dworkin and the Semiotics of Legal *Argument* ; Kelsen and the Semiotics of Legal *Acts*. Traditional legal theory treats rules, doctrine, argument and acts (notably, speech acts) as part of a single, coherent whole : the legal system. Semiotics, on the other hand, looks at each in their individuality, as well as seeking to understand how the sense of the whole is constructed. In this part of the book, I sought to show how Greimasian analysis may assist in all this.

The fact that I had chosen four leading “positivists” proved fruitful, in that Greimas was also himself a “positivist” — but in an entirely different sense. The positivism of Greimas was purely methodological. Despite the claim that there existed universal processes of sense construction (based not on metaphysics, but rather on the perceived utility of the semiotic model wherever it has been

¹⁴ See further my *Making Sense in Jurisprudence*, Liverpool, Deborah Charles Publications, 1996, ch. 6.

¹⁵ On the role (or its absence) of semiotics in legal interpretation, see my “Semiotics and the Problem of Interpretation”, in P. Nerhot (ed.), *Law, Interpretation and Reality. Essays in Epistemology, Hermeneutics and Jurisprudence*, Dordrecht, Kluwer, 1990, pp. 84-103.

¹⁶ H.L.A. Hart, *The Concept of Law*, Oxford, Oxford University Press, 1961 ; R. Dworkin, *Taking Rights Seriously*, Cambridge Mass, Harvard University Press, 1977 ; N. MacCormick, *Legal Reasoning and Legal Theory*, Oxford, Clarendon Press, 1977 ; and H. Kelsen, *The Pure Theory of Law*, trans. M. Knight, Berkeley, University of California Press, 1967.

used), Greimasian semiotics is fiercely empirical, in that it insists on starting with something (here, a text) accessible to our senses. While the positivism of the chosen legal theorists also commences from an empirical claim – that there exists something that has been laid down (“posited”) by a (normally human) authority – it goes on to assert the ontological existence (independent from its text), autonomy and objectivity of the legal system. Thus the legal norm is claimed to have an existence distinct from its linguistic expression.¹⁷ Thus, this form of legal positivism makes ontological claims ; semiotic positivism, on the other hand, seeks merely to explain how such ontological claims are constructed and make sense to those who accept them. It does not, and cannot, validate those claims ; it can only show how, within legal discourse, such claims are validated through processes of recognition (an essential part of the narrative syntagm).

But this exercise in comparative theory was not restricted to differences ; it included some account of the use of non-empirical “postulates” by Greimas and at least one of the legal theorists : Kelsen¹⁸. Overall, I argued (pp. 139-41) that the net effect of semiotic analysis was to privilege neither the positivist nor the naturalist approaches to legal theory, but rather the approach of various forms of “legal realism”, particularly that of the Scandinavian Realists, with their emphasis on language and its underlying psychology¹⁹.

3. The final section of the book first summarises the conclusions for legal theory drawn both from the preceding analysis and from communication studies, stressing the distinction between semantics and pragmatics as reflected both in the work of these positivist legal theorists and their external critics. Interpretation, I argued, is a particular use made of the text, and therefore belongs to pragmatics. It brings into play the act of will of someone other than the author of the text (as was recognised even by Kelsen in his ultimate rejection of the “logic of norms”). The objective validity (not to mention meaning) of particular norms is a matter of social construction (through texts and other means), and the unity of the legal system is similarly an ideological claim whose construction can only be described, not validated.²⁰ This leads to a final chapter outlining what a semiotic model of law might look like. It stresses the semiotic variables within the “legal system” – not only the differences between legislation, doctrine and adjudication, but also the variables of audience (“groupes sémiotiques”²¹), of interpersonal *vs* distanced communication, of semiotic structures and processes, of degrees of coherence in different forms of discourse, and of the needs of different audiences for

17 On the distinction between legal language and the logic of norms, see G. Kalinowski, *La logique des normes*, Paris, Presses Universitaires de France, 1972. I made extensive use of Kalinowski’s work in *Semiotics and Legal Theory*, particularly in ch. 3 on the semiotic square and its relation to the square of classical logic (as developed in modern times), and in ch. 9, distinguishing the different paradigmatic structures in the different forms of legal discourse presupposed by Hart and Dworkin (for which see section 2.2, below). See also the extensive bibliography of Kalinowski cited in *Semiotics and Legal Theory*, listed at pp. 361-62.

18 On the ontological claims (or their absence) of the “deep” (universal) level of signification, and its relationship to theories of natural law, see my “Can Legal Semiotics Contribute to Natural Law Studies?”, *Vera Lex*, VII/1, 1987, pp. 9, 14, 18.

19 See my “Can One Speak of the ‘Deep Structure’ of Law ?”, in S. Panou et al. (eds.), *Theory and Systems of Legal Philosophy*, Stuttgart, Franz Steiner, 1988, pp. 250-261 ; “The Jewish View of Natural Law” (Review of Novak, *Natural Law in Judaism*), *Journal of Jewish Studies*, LII/1, 2001, pp. 136-145.

20 *Semiotics and Legal Theory*, *op. cit.*, ch. 11. I have remained unrepentant on this : see the Conclusion of the present essay.

21 *Ibid.*, ch. 12.

immediate transparency of meaning. It goes on to outline the impact of differences in the choice of semiotic presuppositions, including the Saussurean *vs* Peircean approaches to reference²², and the relationships between legal and non-legal forms of language. Finally, it sought to identify the specificity of legal discourses.

2. Narrativity and Discursivity

Three years later, I sought to develop and apply my version of Greimasian semiotics to law in a manner which I hoped would be more intelligible to legal scholars, in a book entitled *Law, Fact, and Narrative Coherence* (1988)²³.

2.1. Narrativity

I had noted that both lawyers (including MacCormick) and psychologists had been applying versions of narrative theory to the trial, particularly to the fact-finding process within it. For example, the psychologists Bennett and Feldman argued that the perception of truth in the courtroom was primarily a function of the narrative coherence of the stories told²⁴. Their understanding of such narrative coherence was rooted in sociological approaches to the role of “frames” in sense construction. I was attracted by this idea, and have sought to integrate it within the larger Greimasian framework. I came to call those substantive “frames” *narrative typifications of action* (accompanied by *tacit social evaluations* which may vary from one *semiotic group* to another) and to regard them, within Greimasian analytical concepts, as a significant addition to the “thematic level”²⁵. This proved to be the beginning of my attempts to integrate Greimasian semiotics with a number of other social science traditions²⁶. But these narrative typifications made sense, I argued, only insofar as they implemented the structures of the Greimasian narrative grammar.

However, I was struck by the reductive nature of the approach of Bennett and Feldman, and the fact that it completely ignored the pragmatics of the trial process. Neither judge nor jury could actually observe the events, actions and discourses, and circumstances reported by the witnesses in the stories they told ; they could observe only the *actes d’*énonciation** of those witnesses. One did not have to be a semiotician to know that witnesses telling exactly the same story could produce totally different impressions of credibility, depending on a range of factors which lawyers learn to observe and manipulate (without benefit of theory). Yet the activity of each witness (and, indeed, of the legal

22 For debate with others on the basic ontological issues, often reflecting the Saussurian / Peircean divide, see my “The ‘Autonomy Thesis’ and the ‘Pragmatic Turn’ : A Response to Ralph Lindgren”, *International Journal for the Semiotics of Law (IJSL) / Revue Internationale de Sémiotique Juridique (RISJ)*, III/9, 1990, pp. 303-308 ; “Logic and Semiotics : Ontology or Linguistic Structure?”, *IJSL/RISJ*, XI/33, 1998, pp. 323-327 ; “With Reference to Touchie”, *IJSL/RISJ*, XI/31, 1998, pp. 79-93.

23 *Law, Fact and Narrative Coherence*, Merseyside, Deborah Charles Publications, 1988 (paperback ed. 1990).

24 W.L. Bennett and M.S. Feldman, *Reconstructing Reality in the Courtroom*, New Brunswick, Rutgers U.P., 1981. See also B.S. Jackson, “Narrative Models in Legal Proof”, *IJSL/RISJ*, I/3, 1988, pp. 225-246 ; and see further n.54, *infra*, on the work of W.A. Wagenaar and colleagues.

25 See my “Thématisation et typifications narratives en droit”, in E. Landowski and A. Semprini (eds.), “Le lieu commun”, *Protée*, 22/2, 1994, pp. 57-68 ; English version : “Thematisation and the Narrative Typifications of the Law”, in D. Nelken (ed.), *Law as Communication*, Andover, Dartmouth Publishing Co., 1996, pp. 175-194.

26 See D. Carzo and B.S. Jackson (eds.), *Semiotics, Law and Social Science*, Reggio and Rome, Casa del libro editrice, 1985 ; B.S. Jackson (ed.), *Legal Semiotics and the Sociology of Law*, Oñati, International Institute for the Sociology of Law, 1994 ; *id.*, “Introduction : Semiotics and Institutional Theory”, *IJSL/RISJ*, IV/12, 1991, pp. 227-232.

personnel involved in the trial) could itself be analysed in terms of narrative typifications of action (here, of the action of truth-telling, particularly in this institutional context). In short, there were two levels of story involved in the trial process : at the “enuncive” level, the story / stories told or reported, or, more technically, “uttered” (*énoncées*) in the trial and, at the “enunciative” level, the story / stories of the trial process itself, regarded as a succession of inter-related acts of *énonciation* in the courtroom itself. The former are mediated through the latter. And this led me to propose an addition to classical Greimasian theory : the importance of the narrative organisation not only of what is reported in the courtroom but also of the enunciative (or pragmatic) courtroom interactions themselves, through which these narrative productions are achieved. This is what I call the *narrativisation of pragmatics*. It should be stressed again that exactly the same semiotic resources are here in play. After all, the act of telling a story and claiming it to be true can hardly be exempted from the application of the narrative syntagm, being just one form of goal-oriented action²⁷.

I also argued in this book for the symmetry between — better, identity of — the sense-construction processes of “fact” and “law” within the trial process, despite the common conceptual distinction between the two assumed in legal scholarship²⁸. I argued, with examples, that decisions in “hard cases”, here meaning cases where the applicable law was not clear, themselves depended upon comparison of the facts of the case with underlying narrative typifications of action, and that such typifications commonly encompass a range of features and figures that are *not* regarded as legally relevant, and therefore omitted from the justificatory discourse leading to the judgement. I have suggested that this process of comparison elicits judgement of relative (and pertinent) similarity. This proceeds not through a logical / definitional model of subsumption but rather in the manner of Wittgenstein’s model of “family resemblance”²⁹. But we can enrich that model through the use of semiotic concepts : the narrative typifications include a “family” of binary oppositions, where the choices within each binary are conventionally correlated. It is where such conventional correlations of binary oppositions are disturbed, by comparison with the typical case, that we perceive a case to be “hard”. In resolving it, we have choices as to which binary to privilege, and the choice may fall upon a legally irrelevant element in the narrative³⁰.

To illustrate: in the famous New York case of *Riggs vs Palmer*, the courts agonised, in doctrinal terms, over whether a grandson who — knowing that he had been named his grandfather’s heir in his will — had murdered him in order to secure and accelerate his inheritance, should be allowed to

27 In another Greimas/Landowski study (which passed rather unnoticed), a comparable option had been adopted regarding “truth”-construction not in law but in the “cognitive discourse” of social sciences. See A.J. Greimas and E. Landowski (eds.), *Introduction à l’analyse du discours en sciences sociales*, Paris, Hachette, 1979, especially “Le discours cognitif comme récit” at pp. 12-16. See also Cl. Calame, “Enonciation : véricité ou convention littéraire?”, *Actes Sémiotiques Documents*, IV, 34, 1982 (reed. *Actes Sémiotiques*, 119, 2016, <http://epublications.unilim.fr/revues/as/pdf/5622>).

28 See further section 2.3 below.

29 Compare Hart’s approach to legal theory, as discussed in *Making Sense in Jurisprudence*, *op. cit.*, p. 172.

30 See “A Semiotic Perspective on the Comparison of Analogical Reasoning in Secular and Religious Legal Systems”, in A. Soeteman (ed.), *Pluralism in Law*, Dordrecht, Kluwer, 2001, pp. 295-325 (at 316-17), and further in *Making Sense in Jurisprudence*, *op. cit.*, pp. 237-45. For a further example, see the case of *Oswald Rufeisen v. Minister of the Interior*, discussed in “Who is a Jew ? : Some Semiotic Observations on a Judgment of the Israel Supreme Court”, *IJSL/RISJ*, VI/17, 1993, pp. 115-146, on which see further sec. 3.4, below. On the relationship of narrative to explicit analogical reasoning, see also “Analogy in Legal Science : Some Comparative Observations”, in P. Nerhot (ed.), *Legal Knowledge and Analogy*, Dordrecht, Kluwer, 1991, pp. 145-165.

inherit, in the absence of any exclusion of such cases from the New York statute on wills³¹. Ultimately, the New York Court of Appeals decided (by a majority of 2-1) that there was a principle of law, to be applied in this case, that “A person should not profit from his wrong”. The legal philosopher Ronald Dworkin used this case to argue against the view of Hart that the legal system consisted of rules only, so that if there was a gap in the law, it could only be filled by the exercise of judicial discretion. Against this, Dworkin argued that there was always a correct, or at least a best available, answer in the existing law, if the judges looked hard enough, even though only a “Hercules”, a “lawyer of superhuman skill, learning, patience and acumen”³², might be able to persuade his colleagues of such. But once one looks at the facts in “common sense” social rather than purely legal doctrinal terms, one realises that this narrative is so distant from the typical situation of testamentary succession, which presupposes peaceable if not loving (a “tacit social evaluation”) family relationships, that it would “stink” (a non-legal modality) to give the inheritance to the murderer. That means that we privilege the peaceable *vs* violent opposition in the narrative, and regard its deviation from the typical as sufficiently important to justify not applying the legal consequence normally associated with (peaceable) testamentary succession. In short, and despite the naive legal assumption that reasons stated by judges in their judgements represent fully and accurately the very bases of their decisions, we have to make a distinction (on which I insisted more fully in later work) between the private, mental processes of decision-making on the one hand, and the public, discursive processes of justification on the other. The “artificial reason of the law” may dominate in the latter, but the (no doubt culturally-contingent) sense we have in common cannot be excluded at the psychological level³³. Lawyers, believe it or not, are also human beings !

Law, Fact, and Narrative Coherence concluded with a chapter on narrative theory in contemporary historiography (Hayden White, etc.) and one replying to deconstructionist critics of semiotics³⁴.

2.2. Problems of Legal Discourse

The semiotic resources deployed in *Law, Fact, and Narrative Coherence* and, a little earlier, in *Semiotics and Legal Theory*, enabled me to contribute to two particular debates within contemporary legal philosophy : the first whether there exist “gaps” in the legal system ; the second on the nature and status of the normative syllogism as a form of justification in legal decisions.

Part of the debate between Hart and Dworkin³⁵ was couched in terms of whether there could exist gaps in the legal system. Hart appeared to take a purely positivist (in the empirical sense)

31 115 N.Y. 506, 22 N.E. 188 (1889). See R. Dworkin, *Taking Rights Seriously*, London, Duckworth, 1977, pp. 23, 28-30 ; on this, see Jackson, *Making Sense in Jurisprudence*, *op. cit.*, pp. 199-200, 208, 241-42 ; *id.*, “On the Values of Biblical Law and their Contemporary Application”, *Political Theology*, 14/5, 2013, pp. 602-18 (at 613-14).

32 Dworkin, *Taking Rights Seriously*, *op. cit.*, p. 105.

33 See my “Rationalité consciente et inconsciente dans la théorie du droit et la science juridique”, *Revue interdisciplinaire des études juridiques*, 19, 1987, pp. 1-18 ; “Conscious and Unconscious Rationality in Law and Legal Theory”, in Carla Faralli and Enrico Pattaro (eds.), *Reason in Law. Proceedings of the Conference Held in Bologna, 12-15 December 1984*, Milan, Giuffrè, 1988, III, pp. 281-299.

34 See also “Sémiotique et études critiques du droit”, in E. Landowski (ed.), “Le discours juridique : langage, signification et valeurs”, *Droit et Société*, 8, 1988, pp. 61-71 ; “Semiótica y Crítica Jurídica”, *Cuadernos del Instituto de Investigaciones Jurídicas*, V/14, 1990, pp. 295-317 ; “The Wisdom of the Inessential” (Review article on Douzinas et al., *Postmodern Jurisprudence*, London, Routledge, 1991), *Legal Studies*, 12/1, 1992, pp. 103-117.

approach to this : law consists in rules laid down, and if no rule has been laid down for the particular situation, there is a gap. Dworkin on the other hand rejected the possibility of gaps, on the grounds that when litigants come to court, the judge has to make a decision and cannot send them away without a decision, saying “sorry, there is a gap in the legal system”. Moreover, he claimed that the judicial decision must be based upon the judge’s weighing of the respective rights of the parties, even if such rights have to be inferred from the (also often inferred) principles of the legal system by a Hercules. In short, Dworkin adopted a closure rule in order to avoid a gap ; Hart rejected such a closure rule, and accepted that the judge was now making a new rule based on his own discretionary judgement³⁶.

It struck me that the difference between Hart and Dworkin could be understood in terms of Hart’s use of a discourse structure reflecting a logical model akin to that of Blanché’s hexagon, while Dworkin presupposed a discourse structure based on the semiotic square, with its inbuilt closure rule³⁷. But that difference, I argued, itself reflected orientations towards different forms of legal discourse. Hart had, early in his career, been involved in legislative drafting ; he was sensitive to the potential ambiguities of legal language and to gaps in legal formulations, but he was not involved in the consequences of those ambiguities and gaps for litigants. Dworkin, on the other hand, came from an American tradition of legal teaching which was thoroughly based on the activities of the courts³⁸. In short, the debate as to whether there were gaps in “the legal system” failed to account for the difference, in at least one (the “Common Law”) legal tradition, between two quite different forms of legal discourse : legislative discourse on the one hand, judicial discourse on the other³⁹.

A second area where semiotic analysis (if not, here, specifically Greimasian semiotic analysis) has contributed to contemporary legal philosophy concerns the nature and status of the normative syllogism as a form of justification of legal decisions. Kelsen originally argued that the production of legal norms in the courtroom (in which he included the individual norm directed to a particular litigant) was a function of the deductive logic of norms. Thus, if there was a general norm that “Thieves may be imprisoned for a maximum of seven years” (major premise) and the court found that “Smith is a thief” (minor premise), it followed logically that there was a valid legal norm saying : “Smith may be imprisoned for a maximum of seven years”. It was commonly said that the major premise “referred” to the minor premise and thus generated a logical conclusion. But one does not have to be a Saussurian to question this conception of reference. In his well-known paper “On Referring” in *Mind*, the philosopher Strawson also argued that reference is a speech act, in which the speaker uses language to

35 Above, text at nn. 31-32.

36 On Hart’s later concessions to Dworkin and his “soft positivism”, see *Making Sense in Jurisprudence, op. cit.*, pp. 205-209.

37 For the application of the square, etc., to the Hart/Dworkin debate, see “Hart et Dworkin sur le pouvoir discrétionnaire : points de vue sémiotiques”, *Archives de Philosophie du Droit*, 34, 1989, pp. 243-258 ; “Hart and Dworkin on Discretion : Some Semiotic Perspectives”, in D. Carzo and B.S. Jackson (eds.), *op. cit.*, pp. 145-167.

38 On the American realists, see at n. 14 above. Dworkin’s teacher was a prominent Realist : Karl Llewellyn.

39 For an elaboration of this distinction in terms of actantial positions (initial *vs* final Sender) and their corresponding forms of enunciative competence (“légiférante” *vs* “judicatrice”), see E. Landowski, “Une approche sémiotique et narrative du droit”, *La Société réfléchie*, Paris, Seuil, 1989, pp. 98-101, translated as “For a Semiotic and Narrative Approach to Law”, *IJSL/RISJ*, 1/1, 1988.

point to something existing in the world⁴⁰. But when the general norm in our example was enacted, Smith was not a thief; indeed, that Smith may not have existed at all. How, then, could the general norm “refer” to an as yet non-existent minor premise? This was an argument which I later advanced against the use of the normative syllogism as the primary form of legal justification in the theory of legal reasoning of Neil MacCormick⁴¹. He accepted this criticism, but responded that the relations between the minor and major premise were not relations of reference but rather of sense. But who constructed that sense? How could one be sure that the sense (of “thief”) constructed by the legislator in the major premise was the same as the sense (of “thief”) constructed by the judge in the minor premise? Sometimes, a reply is offered to this through a concept of “denotation”: the legislative language did not refer to the minor premise, nor was the judge free to reconstruct the sense in a different way; rather, the sense of the major premise created a “denotation”, understood as a “potential reference”, which the judge had a duty to apply in constructing the minor premise⁴². But such a duty to apply is hardly a matter of logic. This was recognised ultimately by Kelsen himself: the act of the judge itself involved an act of will, and there could be no *logical* relationship between the act of will of the legislator (whose meaning, in legal terms, was the major premise) and the act of will of the judge⁴³.

2.3. Law and Fact

That there is a fundamental distinction between law and fact is a basic (we may say ontological) presupposition of law, legal education and legal practice in the modern world. When it comes to court, law is the business of the professionals, fact that of the laypersons. In those jurisdictions where the laity play a part in the courtroom process, it is limited to fact-determination. Legal argument is the preserve of the lawyers, testimony as to fact that of the laity. That, at least, is the theory⁴⁴. *Semiotics and Legal Theory* was concerned only with the law and legal discourse. *Law, Fact and Narrative Coherence*, as its title implies, expanded the argument to encompass fact. Indeed, part of its impetus, as indicated in section II.1 above, came from the work of psychologists studying the processes of fact determination, and concluding that narrative coherence played a major role in it. But I argued in that section that narrative coherence also underlies the determination of law in difficult cases, thus undermining the basic conceptual distinction which lawyers imbibe with their mothers’ milk.

40 See further Jackson, *Law, Fact and Narrative Coherence*, *op. cit.*, pp. 42-45. The whole of chapter 2 is devoted to “The Normative Syllogism and the Problem of Reference”, this preceding my debate with MacCormick on the issue.

41 *Making Sense in Jurisprudence*, *op. cit.*, pp. 245-55. For the original debate, see i) N. MacCormick, *Legal Reasoning and Legal Theory*, Oxford, Clarendon Press, 1978, ch. 2; ii) B.S. Jackson, *Law, Fact and Narrative Coherence*, *op. cit.*, ch. 2; iii) N. MacCormick, “Notes on Narrativity and the Normative Syllogism”, *IJSL/RISJ*, IV/11, 1991, pp. 163-174; iv) B.S. Jackson, “Semiotic Scepticism: A Response to Neil MacCormick”, *IJSL/RISJ*, IV/11, 1991, pp. 175-190. See also “The Normative Syllogism and the Problem of Reference”, in *Law, Interpretation and Reality*, *op. cit.*, pp. 379-401.

42 Jackson, *Law, Fact and Narrative Coherence*, *op. cit.*, pp. 53-57; *Making Sense in Jurisprudence*, *op. cit.*, pp. 250-251.

43 *Making Sense in Jurisprudence*, *op. cit.*, p. 119, quoting H. Kelsen, *Essays in Legal and Moral Philosophy* (ed. O. Weinberger), Dordrecht, Reidel, 1973, p. 242: “... only the court, which has established that Smith has stolen a horse from the farmer, can will that he should be sent to prison as a thief. And the judge is a different man from the legislator. His act of will cannot be implicit in the act of will of another man”. See further Jackson, “Kelsen between Formalism and Realism”, *The Liverpool Law Review*, VII/1, 1985, pp. 79-93.

44 On lawyers in practice giving testimony, when posing confirmation-seeking questions, see s. 3.1 below.

That this is so is no coincidence. It flows from the basic structure of Greimasian semiotics, which asserts⁴⁵ the universality of the “*structures élémentaires de la signification*”. Such a concept of universality must, at the very least, lead us to hypothesise common structures in what, after all, are merely different types of message. Clearly, we do sense a difference between law and fact. So how is it constructed ?

An *acteur* (whether lawyer or layperson) is instituted as Subject of a communicative act, to claim that a certain behaviour pattern is either factual or normative. The sense of the behaviour pattern is constructed on the model of “narrative typifications of behaviour” ; whether they are claimed to be factual or legal represents a choice of modality from the greater repertoire of possible “tacit social [or here legal] evaluations”. The Subject performs that communicative act. It is then for others (judges, juries) to recognise (or not) the modality that is being claimed. If the jury finds the evidence to be “true”, a fact (for legal purposes) is thereby constituted. If the judge finds the legal argument of one side or the other to be “valid”, a legal norm, a law, may thereby be constituted. These, for the most part, are the only modalities recognised in the courtroom.

But this is subject to two major qualifications. At the “disposal” stage of the case, where the judge decides, whether in criminal or civil matters, what should be the legal consequences in that particular case, other modalities may come into play. Some facts may be met with sympathy, others with disapproval. Second, the very argument that decisions (as opposed to justifications) as to the content of the law in “hard” cases may be arrived at by comparison of standard cases with the instant case in terms of their respective narrative thematisations (including non-legally relevant facts and forms of evaluation)⁴⁶ shows that facts cannot be isolated from social evaluations even in the process of law-determination, notwithstanding the ideological myth of the “artificial reason of the law”.

3. Further applications to legal practice

The legal agenda of my early work in legal semiotics was largely set by the concerns of legal philosophy : the nature and structure of the legal system and the argumentation used to resolve difficult issues of law. The scholars with whose work I engaged approached these issues with different foci, as noted in § I.2 above : for Hart, legal rules (and, in their absence, judicial discretion) ; for MacCormick, legal doctrine ; for Dworkin, legal argument ; for Kelsen, legal acts of will, especially those of the legislator and judge. All these, I argued, were susceptible to semiotic analysis, and any semiotic contribution to legal theory had to take account of all of them, without privileging any one as a defining characteristic of a supposed unified legal system.

But the legal universe extends far beyond the traditional concerns of legal philosophers. There are many practices, both inside and outside the courtroom, which have attracted the interest of social scientists and legal scholars interested in the social realities of the law⁴⁷. Here, too, semiotic analysis

⁴⁵ In the form noted in s. 1.2, above.

⁴⁶ See s. 2.1, above.

⁴⁷ One example, already noted, is the psychological research on the role of narrative coherence in fact determination in court : see s. 2.1, above. In the Anglo-Saxon legal academy, this overall approach has generated an interdisciplinary sub-discipline of “socio-legal studies”.

may serve both as a critique and enrichment of the field. Some examples follow, largely taken from the various stages of a criminal trial in Common Law jurisdictions⁴⁸.

3.1. Witnessing

There is an enormous gap, both temporally and cognitively, between a witness's original perception of an event and the account of that event enunciated in court⁴⁹. We may distinguish the processes of initial perception, encoding in memory, retrieval from memory and enunciation in court.

An initial problem might be considered that of the "translation" process between initial, visual (non-verbal) perception and the verbal account of the perception given in court. Yet some psychologists of perception have themselves stressed the narrative underpinnings of visual perception, which may even lead to "confabulation" : a witness may claim to have perceived something which did not occur but which appears needed to make narrative sense of distinct events which occurred (or were perceived) in sequence. Thus, we have a report that :

A lawyer in a taxi saw the car in front of him stop suddenly and one of the doors swing open. He also saw an old man lying in the road. He thought he had seen the old man fall out of the car or be pushed out. In fact the old man was a pedestrian who had been knocked down ; he had never been in the car whose door had opened.⁵⁰

The "source" of such confabulation — of the narrative which is used in order to interpret⁵¹ the sense data — is much the same as the "narrative typifications of action" which I have sought to add to the Greimasian model. They represent the encoding of social knowledge, itself acquired from a variety of experiential, social and cultural sources. But they also manifest the "rationality" of the underlying narrative syntagm : events in sequence are presumed to be rationally connected (in the present example, by cause and effect rather than human purpose). Moreover, affective factors may also influence initial perception. This is sometimes termed the "mood congruity effect", which I have compared to the "tacit social evaluations" which accompany narrative typifications of action⁵².

Memory studies involve both retention and recall. Here, too, some psychologists have favoured narrative models, if using different terminology. Making sense of "fading" memories involves recourse to forms of social knowledge, in order to fill the gaps. The use of internalised "schemas" for this purpose has been recognised since a classic study of Bartlett in 1932⁵³. In routine matters, particularly, we may forget specific features of an event, but replace them with details from the schema. Wagenaar and colleagues note the dangers of this for the legal system :

48 Much of this material was first published in my *Making Sense in Law. Linguistic, Psychological and Semiotic Perspectives*, Liverpool, Deborah Charles Publications, 1995.

49 *Making Sense in Law, op. cit.*, ch. 10 (which also considers identification evidence, confessions and child witnesses).

50 *Ibid.*, p. 363, citing S. Lloyd-Bostock, *Law in Practice*, London, Routledge, 1988, p. 6, reporting A. Trankell, *The Reliability of Evidence : Methods for Analyzing and Assessing Witness Statements*, Stockholm, Beckmans, 1972.

51 S. Lloyd-Bostock, *op. cit.*, p. 4 : "... perception does not produce a record but an interpretation".

52 *Making Sense in Law*, pp. 364-65, with references to literature.

53 F.C. Bartlett, *Remembering : A Study in Experimental and Social Psychology*, Cambridge, Cambridge University Press, 1932 ; B.S. Jackson, *Making Sense in Law, op. cit.*, pp. 372-73.

Schematized memories are not recollections at all, but reconstructions, and because we do not notice the difference, reconstructed memories have a ring of truth — a dangerous phenomenon.⁵⁴

In one respect, the psychological studies can fortify my stress on the narrativisation of pragmatics. In selecting that data to which to attribute sense, the standpoint of the perceiver plays an important role. “Salience” (relevance, significance) to the perceiver often operates as such a selection mechanism. Things which are frequently seen are often not noticed, if they lack such “salience”. “Weapon focus” provides an interesting example. Witnesses to an armed robbery, particularly when they are themselves threatened by the gunman, are often unable to identify the gunman, even if they had a clear view of his face. Their gaze is fixed on the weapon, which — at the time of the robbery, at least — is far more salient to them than is the gunman’s face⁵⁵. But such “salience” is a feature not of what is observed but of the observer, and at this stage of initial perception there is no temporal or other distance between the observer (the visual *énonciateur*) and what is observed (the visual *énoncé*). I doubt that there is any conceptual reason for diminishing the role of pragmatics when that distance is increased — although in the legal context we must distinguish the pragmatics of the Subject of the action from those of the Subject of the Recognition.

3.2. Courtroom Interaction

The courtroom interaction between lawyer and witness in the processes of examination and cross-examination in the Common Law tradition lends itself very readily to actantial analysis⁵⁶. The lawyer may function as “Helper” (in “examination-in-chief”) or “Opponent” (in “cross-examination”), but the semiotic analysis should not stop at the quest of the witness to survive the ordeal and at the same time perform a *faire persuasif*. Attention to the narrativisation of pragmatics indicates that *the lawyer, too*, is the Subject of a narrative designed to advance his or her own career through successful battle with his own “Opponents”, the witnesses for the other side. And even in the case of “examination-in-chief” (the questioning of a witness on the lawyer’s own side) there are issues to be addressed in relation to the *style of questioning*. A distinction has been drawn between “information-seeking” and “confirmation-seeking” questions. In the former, the witness is invited to provide his or her own verbal formulation of the evidence ; in the latter, the lawyer assumes this role and merely asks the witness to confirm (yes or no). Yet these two different forms of questioning represent quite different speech acts. Confirmation-seeking questions in reality allow the lawyer to replace the witness as the real provider of evidence, quite contrary to all legal theory. In the words of Maley and Fahey,

54 W.A. Wagenaar, P.J. van Koppen and H.F.M. Crombag, *Anchored Narratives. The Psychology of Criminal Evidence*, Hemel Hempstead, Harvester Wheatsheaf, 1993, p. 145 ; W.A. Wagenaar, “Anchored Narratives : A Theory of Judicial Reasoning and its Consequences”, in G. Davies, S. Lloyd-Bostock, M. McMurrin and C. Wilson (eds.), *Psychology, Law, and Criminal Justice*, Berlin, de Gruyter, 1995, pp. 267-285 For a review of this work from a semiotic perspective, see B.S. Jackson, “‘Anchored Narratives’ and the Interface of Law, Psychology and Semiotics”, *Legal and Criminological Psychology*, 1, 1996, pp. 17-45 ; *id.*, *Making Sense in Law, op.cit.*, pp. 177-84.

55 Lloyd-Bostock, *op. cit.*, p. 8 on E.F. Loftus, G.R. Loftus and J. Messo, “Some facts about ‘weapon focus’”, *Law and Human Behavior*, 11, 1987, pp. 55-62. See further Jackson, *Making Sense in Law, op. cit.*, pp. 365-66.

56 See further *Making Sense in Law, op. cit.*, ch. 11, for these and other aspects of courtroom interaction.

they enable the lawyer “to assume the role of story teller in the trial process”⁵⁷. Moreover, the lawyer’s reactions (including body language and tone of voice) to the witness’s answers to the questions posed (not only the content but also the manner of communication) represents a very subtle form of “recognition⁵⁸” — all the more powerful, perhaps, when conveyed in (what we may think of as) this indirect fashion, to a lay jury⁵⁹.

3.3. The judicial “summing-up”

In an English jury trial, the judge addresses the jury in an often lengthy “summing-up” (about the evidence and the law, as well as the jury’s role) before the jury retires to consider its verdict. One such, which I studied, took several hours to deliver, including an overnight adjournment, and generated a transcript of 76 pages, approximately 20,000 words (thus almost as long as the present essay!)⁶⁰. I selected 11 paragraphs for analysis, comprising two passages, the first of which indicated the role of the jury, the second the nature of the law which was to be applied in the case. However well-trained to perform this task, the judge necessarily faces the problem of communication across semiotic groups⁶¹ : unlike the lawyers, the jury normally comprises laypersons without prior experience of this form of communication. The judge is hardly aware of the huge range of linguistic features which are capable of subverting his or her intention : the distinction between communication and signification ; the degree to which non-binding advice may be misinterpreted in the context of a clearly hierarchical speech act ; the use of narrative examples which manifest non-legal modalities as well as illustrating legal propositions. I concluded : “Lawyers think that they are trained in legal language, and that it is this which distinguishes them from laypersons. In fact, examples such as these indicate the narrow scope of the specialised linguistic knowledge they possess. Lawyers are trained in legal concepts, and in the abstract terms which express those legal concepts. They are not trained in grammar, stylistics or discourse analysis (let alone, normally, in psychology or semiotics). But it is at these latter levels, very frequently, that vital components of sense construction are located”.

57 See *ibid.*, pp. 398-402, on Y. Maley and R. Fahey, “Presenting the Evidence : Constructions of Reality in Court”, *IJSL/RISJ*, IV/10, 1991, pp. 3-17 (quotation at p. 7). Moreover, the initial framing of the story is entrusted to the lawyers (without challenge) in their opening statements : see *Making Sense in Law*, p. 398, noting the advice of one practitioner manual: “Narrative should always be clear and orderly. It should also arouse interest, by telling the story in a vivid and imaginative way, and bringing out the character and emotional behaviour of the chief actors” : J. Munkman, *The Technique of Advocacy*, London, Butterworths, 1991, p. 144.

58 The term is used in both legal philosophy (Hart’s secondary rules of recognition of the legal system) and in Greimasian semiotics. See *Semiotics and Legal Theory*, *op. cit.*, pp. 6-7 for the former, 69-73 for the latter; 134, for comparison. In semiotics, it builds upon the “glorifying test” and “sanction”. At 70, I quoted J. Calloud, “A Few Comments on Structural Semiotics : A Brief Review of Method and Some Explanations of Procedures”, *Semeia*, 15, 1979, pp. 62f. : “...the trajectory which explores the fullest potentialities of the narrative structure is one with four phases or stages : manipulation, competence, performance, recognition”. In *Making Sense in Law*, *op. cit.*, p. 146, I wrote : “At the end of the syntagm there is another communicational element, the sending and receiving of recognition of what has occurred. (...) In ‘recognition’, too, a Sender sends a message to a Receiver, which produces the sense that the task is recognised as having been performed, not performed, well performed, badly performed, etc.”

59 See further *Making Sense in Law*, *op. cit.*, pp. 402-04.

60 See further *ibid.*, pp. 426-439 ; more fully in “Some Semiotic Features of a Judicial Summing-Up in an English Criminal Trial : *R. v. Biezanek*”, *IJSL/RISJ*, VII/20, 1994, pp. 201-224.

61 Greimas uses the phrase *groupes sémiotiques* to refer to groups whose members possess in common a competence to send and receive a certain type of discourse : see, A.J. Greimas, *Sémiotique et sciences sociales*, Paris, Seuil, 1976, p. 53, and my discussion of its application in the legal context at *Semiotics and Legal Theory*, *op. cit.*, pp. 284-287. In *Making Sense in Law*, *op. cit.*, pp. 93-98 I relate it to socio-linguistic discussions of speech communities and professional languages.

3.4. Narrativity in the formal judgement

The formal judgement in a case is frequently an even longer document, designed primarily for the benefit of the legal profession and initially often circulated in draft amongst the judges deciding the case with a view to eliciting the support of the other judges. It thus has a rhetorical function, particularly in high-profile controversial cases. One such was a case which reached the Supreme Court of the State of Israel : *Oswald Rufeisen v. Minister of the Interior*⁶² (often referred to as the “Brother Daniel” case). The petitioner, Oswald Rufeisen, was born in Poland of Jewish parents, reared as a Jew, and was active as a youth in a Zionist Youth movement. When the Germans occupied Poland he managed to infiltrate a German Police Station and was able to pass information to the local Jewish population, thus saving them from deportation (and worse). He then fled to the forest and joined a group of Russian partisans. There came a stage when he had to take refuge in a small Catholic nunnery. There, he converted to Catholicism, while still regarding himself as a Jew. After the war he maintained his earlier commitment to emigrate to Israel and ultimately arrived there in 1958, claiming his right to Israeli citizenship as a Jew under Israel’s 1950 Law of Return. By a majority of 4-1, the Israel Supreme Court denied his petition, while allowing him to enter and ultimately obtain citizenship by naturalisation.

I reproduce here an extract from my analysis of the judgement, which illustrates the application of some of the central points of my Greimasian analysis as described above⁶³ :

“Before we consider the construction of the sense of the judgments, we need to ask why the case presented a problem at all. Why was it a “hard case” ? For its appearance as such is part and parcel of the sense it presents — the sense of the problematic. In some earlier publications, I have sought to answer this question in terms of the operation within unconscious reasoning of :

networks of binary oppositions which are associated with each other. Thus, A may be opposed to B, Y to Z. The two oppositional pairs are associated in the sense that when A is present, we expect Y (rather than Z) to be associated with it ; when B is present, we anticipate Z. When such associations are realised, the situation which manifests them strikes us as intuitively clear. But when these associations are reversed, we have a mixture of categories which produces confusion or difficulty.⁶⁴

62 H.C. 72/62, Supreme Court of the State of Israel sitting as the High Court of Justice.

63 B.S. Jackson, “Who is a Jew ? : Some Semiotic Observations on a Judgment of the Israel Supreme Court”, *IJSL/RISJ*, VI/17, 1993, pp. 115-146, at 135-137 (this is not included in *Making Sense in Law*, but see *Law, Fact and Narrative Coherence*, *op. cit.*, pp. 94-97, for an English Law example of judicial narrativisation : *Miller v. Jackson* [1973] 3 All E.R. 338-41). My comments are based on the official English translation of the Hebrew judgements in *Selected Judgements of the Supreme Court of Israel*, A.F. Landau (ed.), Special Volume, Jerusalem, Ministry of Justice, 1971.

64 “Semiotics and the Problem of Interpretation”, *op. cit.*, pp. 98 ff., with examples from ancient law and modern jurisprudence. See also my “Conscious and Unconscious Rationality in Law and Legal Theory”, *op. cit.*, pp. 291-294 ; French version in “Rationalité consciente et inconsciente ...”, *op. cit.* The principle of sense-production based on such networks of correlated semantic categories may be regarded as akin to the functioning of the “semi-symbolic” systems (connecting categories of the expression with oppositions at the content level) recognised by J.-M. Floch in the domain of visual discourses. See J.-M. Floch, *Petites mythologies de l’œil et de l’esprit*, Paris-Amsterdam, Hadès-Benjamins, 1985, pp. 206-207.

But such oppositions are manifest in what I have since come to call the thematic level, that of the substantive stereotypical narratives constructed within social knowledge and used as frameworks of understanding of new discursive constructions⁶⁵. If there is insufficient “fit” between the story told and an existing narrative typification, that may create a difficulty in the construction of sense. In this case, the story of Brother Daniel is overdetermined : it combines elements from different narrative stereotypes, and thus brings into conflict the opposing forms of recognition — what I have called “tacit social evaluations” — which accompany, respectively, those narratives. We commence with an unremarkable narrative of a Jewish boy seeking to fulfil a Zionist ideal (tacit social evaluation⁶⁶ — sympathy, understanding), proceed to the quite remarkable story of a war hero (tacit social evaluation — admiration), and then to the story of a Jew who has converted (deserted) to Christianity (tacit social evaluation — disapproval, for some disgust). To make sense of all this, we need either to select and privilege some aspects of the story and suppress others, or to create a new synthesis and with it a new evaluation. It is noteworthy that Justice Silberg, in describing his own “psychological difficulty” in the case, speaks in terms of conflicting evaluations :

But this sense of profound sympathy and obligation must not be permitted to mislead us and to justify our profaning the concept of “Jew” both in name and in meaning.

Sympathy and obligation are here brought into opposition with a sense of profanity. We do not “normally” find the hero and the deserter united in a single person.”

The differences between the majority and minority on the court as to whether a Jew who had adopted Christianity could still be regarded as a Jew, I argued, depended on whether “Jew” and “Christian” were contraries within a semiotic square or whether they admitted of further possibilities (in accordance with the logic of Blanché). Indeed, the differences between the judges went beyond their conceptions of “a Jew” and extended to the Jewish nature of the State itself — whether it should be viewed simply as a continuation of the Diaspora experience (which maintained tradition in a defensive way) or as representing a rebirth, a fresh start. This latter issue, I suggested, reflects differences in constructing the relation between Past and Future, which could also be analysed in terms either of the square or the hexagon, or both.

The minority judge, Justice Haim Cohn, concluded his argument by linking these two issues in narrative terms:

At the gates of the homeland which (according to the said Declaration) “the State will open wide to every Jew”, the petitioner now knocks and declares : “I am a Jew, let me in.” And the Minister of the Interior, who is charged with implementing the Law of Return, refuses to listen because of the gown that the petitioner wears as a Catholic priest, the cross that hangs from his neck, and his self-declaration that his creed is that of the

65 What “Parisian” semioticians would nowadays probably call *praxis énonciative*.

66 I need hardly say that this is relative to a particular semiotic group : I assume here the semiotic group of Israeli Jews.

Gentiles. Had he folded his gown, hidden his cross and concealed his creed, the gates would have been opened wide without protest. But he chose to come as he is, openly and without guile, and he finds the gates locked.

It is difficult not to recall those Jews who, loyal to their ancestral faith, donned the outward garb of the Christian religion so that they might continue to dwell in the lands beloved to them and harvest the fruit of their toils. How loudly they cried : “We are Christians, open up the gates”. But had they revealed their true selves, their devotion to the religion of Israel, all gates would have been closed before them.

This is not merely a graphic portrayal of the semiotics of the construction of Brother Daniel’s identity, at the narrative moment at which he presented himself at the port of entry. The opposition between the openness and integrity of Brother Daniel and the hypothesis that he would have been more successful had he concealed his habit, his cross, etc., relates directly to the previous argument regarding the change in values between the Diaspora Jew and the Jew of the State of Israel. The former, as Justice Cohn makes explicit, needed to conceal, to dissimulate, in order to survive. But we, now (he was arguing), the free Jews of the State of Israel, have no more need for such dissimulation. Let us now celebrate and value our capacity for open self-expression, and by the same token not deny that capacity to our brother, Brother Daniel :

Times have changed and the wheel has turned full circle. There comes now to the State of Israel a man who regards Israel as his motherland and craves to find fulfilment within its borders, but his religion is Christian. Shall we therefore close the gates ? Does the turning wheel of history indeed demand that we deal out measure for measure ? Should the State of Israel, “based on freedom, justice and peace as envisaged by the prophets of Israel”⁶⁷, act towards its inhabitants and those who return as did the evil rulers of some Catholic kingdoms in the past ?

The metaphor of opening and closing the gates is more than the invocation of visual symbols of entry or denial. It is a symbol also of the open-mindedness or closed-mindedness of the Jewish tradition itself, as the rejection of “measure for measure” here suggests. The argument is capped by a quotation from Isaiah (and its rabbinic interpretation) :

This was the vision of the prophets of Israel : “Open ye the gates that the righteous gentile which keepeth the truth may enter in” (Isaiah xxvi, 2). Isaiah speaks of the righteous gentile, and not of priests, levites or of the people of Israel. Almighty God does not disqualify anyone ; all are acceptable to Him ; the gates are always open and whoever wishes may enter (*Sifra, Aharei Mot ; Shmot Raba*, ch. 17).

In short, the openness of the gates, and of the revived prophetic values of Jewish religious culture, require that anyone presenting himself “in good faith” as a Jew must be allowed to register,

⁶⁷ Quoted from Israel’s “Declaration of Independence” (officially termed : Declaration of the Establishment of the State of Israel).

and granted immigration rights, as such. The good faith of the applicant is the mirror image of the openness now demanded of the Jewish religious tradition.

3.5. Jury Research: the Story *in* the Trial and the Story *of* the Trial

For the above mentioned reasons, my analysis of the trial in Greimasian terms has led me to distinguish two sets of narratives within it : on the one hand the story *in* the trial (the issue being adjudicated) ; on the other, the story *of* the trial (and particularly the contests between the various participants in it)⁶⁸. In chapter 12 of *Making Sense in Law*, I turned to jury research, commenting largely on the semiotic implications of the work of psychologists of law who have studied jury behaviour, including the jury's perception and recall of legal instructions, and the story of what actually occurs in the jury room (another example of the narrativisation of pragmatics).

Amongst the features highlighted in this earlier jury research was the selection of foreman (very often the first person to speak, particularly with the question : who should be the foreman?), and a distinction between verdict-driven and evidence-driven deliberation, the former commencing with a straw poll designed to see if there is already unanimity (in the hope of arriving at a speedy decision), the latter involving a consideration of the evidence before anyone commits to a particular view⁶⁹. So to commit immediately creates a new dynamic : the juror concerned has invested personal credibility in the view so expressed, and may feel obliged to defend it, come what may. This potentially confrontational aspect of jury interaction was prominent in a shadow jury experiment at the Liverpool Crown Court, an edited account of which was shown on television ("Inside the Jury")⁷⁰. The case involved two charges of assault upon the police. A number of passages from the jury discussion illustrate the role of narrative typifications of action both in support of particular views and, when used ironically, against them. Moreover, the discussion involves narrative comments on speech behaviour within the case (again, narrativisation of pragmatics). The sense attributed to the utterances is constructed through comparison with narrative typifications of speech behaviour, and through narrative assumptions of *why* people make typical kinds of utterances in typical situations :

Why would a doctor come out with that statement ? Because he's a police surgeon... He's on their side, let's face it.

And this is applied also to speech behaviour within the jury room. The arguments are personalized : it becomes a matter not so much of arriving at the truth but winning an argument :

Can I just say something. Now I am talking to the people who think this guy is not guilty. I haven't heard one argument of any of you that would make me change my mind one iota. Nothing.

And to do so, stereotypes are invoked :

68 See section 2.1.

69 *Making Sense in Law, op. cit.*, pp. 452-54, on R. Hastie, S. Penrod and N. Pennington, *Inside the Jury*, Cambridge MA., Harvard University Press, 1983, pp. 163ff.

70 See further *Making Sense in Law*, pp. 458-65.

S1 Can I just analyse that for the four people who find him guilty are four mature men of varying degrees...

S2 We've got mature ladies here.

S1 Please, the people who find him not guilty are mature ladies together with all the youngsters...

S3 Us women haven't got the sense to see your reasoning, that's what you're trying to say. The four mature men know what they're talking about but us because these are young and because we're women we haven't got a clue.

This is just one manifestation of a common epistemological strategy : rather than seeking to investigate the truth of a proposition, we rely upon (or seek to deny) the trustworthiness of the source, and this trustworthiness is frequently constructed in terms of stereotypes or narrative typifications of reliable speech — or, better, reliable speakers⁷¹.

It is worth asking how the jury knew how to behave in that jury-room. For most jurors, jury service occurs but once in their lives. They thus have no prior experience on which to draw. They do, of course, have some narrativised knowledge of how juries typically behave, particularly from television and film. However, one might suspect that these narrative typifications of jury behaviour are accompanied by the sense of the non-real, the fictional, the dramatic, which may — whether consciously or unconsciously — diminish their influence upon the behaviour of a real jury. So let us assume that this jury was entering upon *terra incognita*. In the absence of usable narrative typifications of jury behaviour, one might suggest that the members of the jury would rely upon such social knowledge as they might possess of forms of collective decision-making in other contexts. Such other forms would be stored as narrative typifications of pragmatic action. For example, a business executive might be expected to internalise the forms of behaviour employed in board room discussions ; a trade union official (there was one on this shadow jury), the forms of discussion employed in union meetings ; an academic, the forms of discussion encountered in scholarly seminars ; while those whose occupational culture does not involve collective decision-making would take their models from outside the occupational sphere. One possible view of the videoed discussion in this case is that, for many members of the jury, the closest model may have been the pub discussion of that afternoon's football match — as indicated by frequent cross-talking, the investment of personal credibility, and the taking of sides.

One juror, finding himself under pressure as a member of the minority (for conviction), offered a compromise :

Well, can I put something to you, Raymond ? The way I see it nobody will ever know for certain what the truth of that... of that night. I think overall, overall on balance, really the

71 I first addressed the issue of truth in "Bentham, Truth and the Semiotics of Law", in M.D.A. Freeman (ed.), *Legal Theory at the End of the Millennium*, Oxford, Oxford University Press, 1998, pp. 493-531 (*Current Legal Problems* 51). Translated into Portuguese as "Bentham, Verdade, e Semiótica Jurídica", in A. Silva Dias *et al.* (eds.), *Liber Amicorum de José de Sousa e Brito. Estudos de Direito e Filosofia*, Coimbra, Almedina, 2009, pp. 133-60. See also E. Landowski, "Sincérité, confiance et intersubjectivité", *La Société réfléchie, op. cit.*, pp. 202-17, and "Vérité et véridiction en droit", *Droit et Société*, 8, 1988, pp. 45-60, at 48-56 ; translated as "Truth and Verediction in Law", *IJSL/RISJ*, 2/4, 1989, pp. 29-47.

incident calls for an honourable or dishonourable draw and I would say guilty on one [charge], not guilty on the other. That is honours even for both sides.

3.6. The Criminal Verdict

In England, a criminal trial may conclude with one of two verdicts : “guilty” or “not guilty” ; in Scotland, on the other hand, three are available : “guilty”, “not guilty” or “not proven”. The difference between them was highlighted in 1994 by a criticism of the English “not guilty” verdict by a retired senior judge (Lord Donaldson), as being misleading to the layman, who is apt to interpret “not guilty” as the contrary of “guilty”, i.e. “innocent”, rather than the contradictory of what “guilty” means to the lawyer : “not guilty”. The issue is readily translatable into the concepts of Saussurean semantics⁷² : the layman looks, as a matter of ordinary language, for the (conventional) binary opposite of “guilty” and finds “innocent”. Professional discourse, on the other hand differs in two respects. First, it invests “innocent” not with the modality of “fact” but rather that of “proof” — reflecting the greater orientation of the professional to the “story of the trial” (who wins), rather than the “story in the trial” (what actually happened). Secondly, the professional adopts not the contrary of (proved) guilty but rather its contradictory, not (proved) guilty, which leaves open two logical possibilities : the defendant has not been (proved) guilty either because he is actually innocent or because, though guilty, there is inadequate proof for legal purposes⁷³.

4. How different is religious law ?

In order to concentrate on my interests in Jewish law, I moved in 1997 from a Faculty of Law at Liverpool to the Centre for Jewish Studies in the Department of Religious Studies and Theology at Manchester. I felt, at the time, that I had no more to say regarding secular law, and did not expect to make further contributions to the semiotics of law, but my work in Jewish law (both ancient and modern) has enabled me both to (i) use semiotics (broadly defined) as a tool of historical criticism, particularly adept in identifying anachronisms in modern historical scholarship ; (ii) provide a different context which enhances the understanding of modern (secular) law ; and (iii) explore further applications for semiotic methodology. In 2000, I published a book entitled *Studies in the Semiotics of Biblical Law*⁷⁴, in which I used both synchronic and diachronic models, the former based primarily on Greimas, the latter on theories of cognitive development⁷⁵, to address a number of semiotic issues raised by the biblical texts.

⁷² See *Semiotics and Legal Theory*, *op. cit.*, pp. 35-41.

⁷³ *Making Sense in Law*, *op. cit.*, pp. 26-30 ; expanded, both semiotically (using the square and the hexagon) and in a philosophical direction in “Truth or Proof ? : The Criminal Verdict”, *IJSL/RISJ*, XI/33, 1998, pp. 227-273, where the importance of the narrativisation of pragmatics is also illustrated.

⁷⁴ Sheffield, Sheffield Academic Press, 2000 (JSOT Supplement Series, 314).

⁷⁵ *Studies in the Semiotics of Biblical Law*, ch. 1, used particularly in a discussion of the development of legal drafting in the Bible in chapter 4. See also “Historical Aspects of Legal Drafting in the Light of Modern Theories of Cognitive Development”, *International Journal of Law and Psychiatry*, 3, 1980, pp. 349-369 ; “Legal Drafting in the Ancient Near East in the Light of Modern Theories of Cognitive Development”, *Mélanges à la mémoire de Marcel-Henri Prévost*, Paris, PUF, 1982, pp. 49-66.

The diachronic models here used combine two traditions : on the one hand, the cognitive developmental tradition of Piaget (who wrote, inter alia, a book on structuralism⁷⁶) and Kohlberg, who developed and applied this theory in the sphere of “moral development”⁷⁷ ; on the other, the work of Walter Ong on orality and literacy⁷⁸ and an application of that approach by the educationalist, Basil Bernstein⁷⁹. Ong stressed the different cognitive features of oral and written communication, while Bernstein distinguished two forms of written communication : “restricted” and “elaborated” code, the former⁸⁰ not spelling out the full content of the message, but rather relying upon the shared social knowledge of writer and reader, the latter spelling everything out, this often used in non-cooperative social contexts (and thus, particularly relevant to studies of some forms of law).

The study of Jewish law presents particular conceptual and methodological problems which might appear quite different from those of modern law. The foundation text, the Bible, has little resemblance to any modern legal document. The laws, mostly found in the Pentateuch, are embedded in a wider narrative, and scholars have great difficulty in determining conclusively their authorship, authority and dating. They do not claim to be the enforceable law of a state, but are presented as divine revelations (or teachings⁸¹) of what such a law ought to be. They consist largely in concrete, individual rules rather than legal concepts and institutions⁸².

When we turn to the rabbinic sources, commencing roughly in the third century C.E. and continuing to this day, we find increasing conceptualisation and systematisation, which has prompted some modern scholars to speak of “Hebrew law”⁸³ and to model it, quite self-consciously, on the structures of modern secular law⁸⁴. I have argued, however, that this approach is erroneous (as indicated in section 4.7 below). It may come as no surprise to a semiotician that there is no universal concept of “law” ; rather, we have to investigate the construction of the sense of those particular phenomena in any culture which are conventionally regarded as legal, while at the same time admitting the possibility that there is no unity in the sense of the legal from one discourse to another⁸⁵. We have to look, in particular, at the manner in which authority is constructed and recognised, together with the modalities of recognition attributed to the particular forms of behaviour with which

76 J. Piaget, *Structuralism*, transl. C. Maschler, London, Routledge and Kegan Paul, 1971. See further my “Piaget, Kohlberg and Habermas : Psychological and Communicational Approaches to Legal Theory”, in V. Ferrari and C. Faralli (eds.), *Laws and Rights*, Milan, Giuffrè, 1993, II, pp. 571-592.

77 L. Kohlberg, “Theoretical Introduction to the Measurement of Moral Judgment” (with Kelsey Kauffman), in A. Colby and L. Kohlberg, *The Measurement of Moral Judgment*, Cambridge, Cambridge University Press, 1987, Vol. 1, pp. 1-61.

78 W. Ong, *Orality and Literacy*, London and New York, Methuen, 1982.

79 B. Bernstein, *Class, Codes and Control*, London, Routledge and Kegan Paul, 1971, 3 vols.

80 Being closer to orality, reflecting what Ong called “oral residue”.

81 The term *torah* means “instruction” rather than “law” ; I have argued that there are strong affinities to the Biblical “wisdom” tradition : *Wisdom-Laws : A Study of the Mishpatim of Exodus 21:1-22:16*, Oxford, Oxford University Press, 2006.

82 On this, see further below s. 4.6.

83 *mishpat ivri*, as opposed to the traditional designation, *halakhah*, “the way”.

84 The object being to facilitate its incorporation into the law of the (secular) State of Israel.

85 A distinction has been proposed between a “*sémiotique juridique*”, the application to norms of the (hypothetically universal) fundamental syntax of the *structures élémentaires de la signification* and a “*sémiotique du droit*” concerned with the analysis of the forms of implementation of this syntax in systems of positive/substantive “law” wherever they exist. See E. Landowski, *La Société réfléchie*, op. cit., pp. 79-81 ; English version at *IJSL/RISJ*, 1/1, 1988, pp. 82-86.

the tradition deals. I have observed that Jewish law, in common with Islamic law, is distinct from modern secular law, in that while the latter restricts the modalities attributed to behaviour to the required, permitted and forbidden (the three “deontic modalities” recognised in legal logic), Jewish and Islamic law (the latter more systematically) also recognise the modalities of “encouraged” and “discouraged”, thus incorporating within “the law” norms which a modern (secular) positivist lawyer would exclude as “moral” or “ethical”⁸⁶.

4.1. Media and Mediation of Biblical law

Insofar as Biblical law is regarded as a religious form of law, originating in God, we may ask how, and through what media, the divine will was mediated⁸⁷. Many would offer as a first answer : speech, specifically speech acts of command, as in the “Ten Commandments”. In fact “Commandments” is a mistranslation : the Hebrew literally means only “words” — perhaps better, in this context, “utterances”. But what kind of speech act is the opening sentence of the Decalogue : “I am the LORD your God, who brought you out of the land of Egypt, out of the house of bondage” (*Exod.* 20:2) ? Should we view it as an indirect speech act, having the form of a constative but the force of something different ? Jewish tradition does regard it as the first “word” ; for Christians, on the other hand, it is the introduction to the next commandment, that against idolatry, rather than an independent commandment⁸⁸. We may put the issue in the terms of modern linguistics. Is this sentence the mere making of a truth-claim, or is it a different kind of (indirect) speech act⁸⁹ ? Should we perhaps compare it to an utterance like : “I am your father”, delivered by an irate Dad to his infant in reaction to some insulting speech or behaviour, or in connection with the laying down of rules of behaviour which the infant questions. Rationally, we might view this as the statement of a “motive” for obedience, but this would be insufficient. The utterance is designed to evoke a feeling, a sentiment, and not merely a course of behaviour : it is a demand for loyalty and respect⁹⁰. If we view — as we should — this Biblical speech act in its narrative context, much the same conclusion applies : “I am the LORD your God, who brought you out of the land of Egypt, out of the house of bondage” is not a mere truth-claim⁹¹, but rather a demand for loyalty, the loyalty inherent in adherence to a covenant under

86 See “Constructing a Theory of Halakhah”, §3.4, pp. 17-18, downloadable from <http://jewishlawassociation.org/resources.htm>. For a similar observation about the range of modalities in the Islamic context, see M. Hammad, “Du croire en langue arabe”, *Actes Sémiotiques*, 119, 2016 (<http://epublications.unilim.fr/revues/as/5660>).

87 Last year, I was invited to participate in an international conference in Turin on “Mediation and Immediacy. The Semiotic Turn in the Study of Religion”, organised by Massimo Leone, Robert Yelle and Jennifer Ponzio (to all of whom I express my gratitude for their hospitality and engagement with my work). In concluding the meeting, Massimo Leone commented that we (at least, as scholars) have no direct access to *immediate* religious experience, and have to rely on mediated accounts (a remark which appeared to command widespread agreement). See further my “Mediation and Immediacy in the Jewish Legal Tradition” in the forthcoming conference volume (prepublication version available at <https://www.academia.edu/s/171e34ccfc?source=link> and <http://ssrn.com/abstract=2800819>).

88 G.B. Sarfatti, “The Tablets of the Law as a Symbol of Judaism”, in B.Z. Segal (ed.), *The Ten Commandments in History and Tradition*, Jerusalem, Magnes Press, 1990, pp. 41of., citing Augustine in Migne, *Patrologia Latina*, III, 620, 644.

89 See further *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 51f., esp. 52, n. 17.

90 This is quite compatible with the common historical explanation, in terms of the dependence of biblical covenants on ancient treaty forms, where loyalty and obedience are pledged in exchange for protection.

91 In my original treatment I commented on this “(such as might evoke the response : ‘Sure, everyone knows that. So what ?)’”, but this may not be adequate. Even if the Israelites already fully accepted that it was YHWH who

which God had already demonstrated his performance of his role of protector. The demand for belief thus involves not just cognition but an affective state : the feeling of loyalty⁹².

The example illustrates the need not to view speech acts in isolation, where the linguistic form automatically determines what act the speech performs. Sbisà and Fabbri reject that logical model, based on necessary and sufficient conditions, and argue that in practice speech acts operate through the use (and indeed negotiation) of such conditions in particular contexts of social interaction⁹³. In the Bible, it is the surrounding narrative which indicates that context. An example of an eminently negotiable (divinely inspired) speech act occurs in the story of Susanna and the Elders in the Apocrypha. Susanna, the wife of a leading member of the Jewish community in exile in Babylon, is convicted of adultery on the false evidence of two elders, whose attempt to blackmail her into gratifying them she has resisted. The elders testified that they had observed her *in flagrante delicto* with her lover ; they had attempted to detain the young man, but he had been too strong for them and had escaped. In deference to their position, the assembly believes them and condemns Susanna to death, in accordance with *Deut. 22:22*. Susanna cries out in protest : the omniscient God must know the falsity of the charge.

The Lord heard her cry. And as she was being led away to be put to death, God aroused the holy spirit of a young lad named Daniel ; and he cried with a loud voice, “I am innocent of the blood of this woman”. All the people turned to him, and said, “What is this that you have said ?” Taking his stand in the midst of them, he said, “Are you such fools, you sons of Israel ? Have you condemned a daughter of Israel without examination and without learning the facts ? Return to the place of judgment. For these men have borne false witness against her”. Then all the people returned in haste. And the elders said to him, “Come, sit among us and inform us, for God has given you that right”. And Daniel said to them, “Separate them far from each other, and I will examine them”. (vv.44-51)

To each, he posed the question : “Under which tree was the offence committed ?” The first responded : “Under a mastick tree”, the second : “Under a holm tree” ⁹⁴. In the light of this contradiction in the evidence, the assembly immediately acquitted Susanna, and (more problematically) turned on the two elders and put them to death in accordance with the Mosaic law against malicious testimony (*Deut. 19:16-19*).

We are entitled to ask : how was it possible for Daniel to get the court reconvened in the first place ? For the narrative to make sense, we have to distance ourselves from the privileged knowledge of the narrator — that Susanna is actually innocent, and that God has indeed inspired Daniel to intervene on her behalf, in the light of her own invocation. We have to ask how God performed this

liberated them from Egypt, it may not have been self-evident that this was the God speaking to them from the mountain.

92 On the range of senses regulated by the Decalogue, see *Studies in the Semiotics of Biblical Law, op. cit.*, pp. 68f.

93 M. Sbisà and P. Fabbri, “Models (?) for a Pragmatic Analysis”, *Journal of Pragmatics*, 4, 1981, pp. 301-319.

94 In the Greek, the names of the trees figure in a skilful double pun, which has prompted scholarly discussion, from ancient to modern times, as to the original language of the story. See further B.S. Jackson, “Susanna and the Singular History of Singular Witnesses”, *Acta Juridica*, 1977, p. 38.

semiotic trick : how was Daniel endowed with authority such as to secure the reconvening of the court? If we regard this as a speech act of summons, we need to reconstruct the preparatory conditions for its performance : the authority of Daniel to make such a demand. But there is little indication that Daniel had any institutional authority. If so, it appears that the members of the court were prepared to ignore this failure of the normal preparatory conditions, and to rely instead on his tone of voice and sense of conviction. In short, the normal preparatory conditions appear to have been “negotiated”. And this pattern occurs in other speech acts, such as naming⁹⁵, and indeed reflects the nature of much Biblical law, characterized by self-enforcement and negotiation rather than third party hierarchical enforcement⁹⁶.

But speech alone is not the only medium of communication. There is also great emphasis on vision. The first thing we read on the Israelites’ arrival at Sinai is God’s command to Moses to “tell the people of Israel : You have *seen* what I did to the Egyptians ...” (*Exod.* 19:3-4), as a prelude to what is called the “priestly covenant”. True, what is seen here is not the Godhead, but its (miraculous) actions, but they are seen by the whole people. The chapter, however, then continues with a theophany : there is thunder, lightning and the sound of a (ram’s) horn (19:13). God descends to the top of the mountain, and though the people cannot see him directly (he is in a cloud⁹⁷), they can hear his voice (and are duly terrified). Then, immediately after the 10 Commandments, we read (*Exod.* 20:14):

All the people saw the voices and the lightning and the voice of the trumpet and the mountain burning and trembled ...

But how can you “see” thunder ?” Some translations seek to solve the problem by substituting a neutral verb such as “perceived”. But there is no doubt that the verb used in the Hebrew, *ra’ah*, does mean “see” in the visual sense (and this has been interpreted as synaesthesia⁹⁸). Indeed, that verb is used in other contexts of divine revelation. One of the Hebrew nouns translated in the English Bible as “prophet” means, literally, “one who sees : (*ro’eh* — in some older translations rendered as “seer” — of a vision⁹⁹, not the Godhead¹⁰⁰). The language of the narrative thus appears to attach particular privilege to the visual form of perception¹⁰¹.

95 On the naming of Moses (by the Egyptian princess) in *Exod.* 2:10 see *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 47f. ; on that of the child of Ruth and Boaz (by the neighbourhood women !) in *Ruth* 4:17, see B.S. Jackson, “Acknowledgement and Recognition in Biblical Law”, in a forthcoming Festschrift for Jacob Fleishman.

96 *Studies in the Semiotics of Biblical Law*, *op.cit.*, pp. 82-92 ; *Wisdom-Laws*, *op. cit.*, pp. 29-35, *et passim*.

97 19:9 ; in fire, according to v.19.

98 N. Stahl, *Law and Liminality in the Bible*, Sheffield, Sheffield Academic Press, 1995, p. 53 ; B.S. Jackson, *Semiotics of Biblical Law*, *op. cit.*, pp. 64f., citing R. Sekuler and R. Blake, *Perception*, New York, McGraw-Hill, 1990, 2nd ed., p. 12 : “Suppose you were able to reroute the nerve from your eye, sending it to the part of your brain that normally receives input from your ear. Suppose that while you were at it, you also rerouted the nerve from your ear, sending it to that part of your brain that normally gets visual information. Now imagine that with this revised nervous system, you are caught in a thunderstorm. You should *hear* a flash of lightening and then *see* a clash of thunder”.

99 Dreams are also a form of visual perception, and their interpretation is often viewed as a human mediation of a divine revelation. For an example, see sec. 4.4 below.

100 The patriarchs had direct encounters with angels (see J.W. Goll, *Angelic Encounters, Engaging Help from Heaven*, Lake Mary FL., Charisma Media, 2013, pp. 162-63) but no visual contact with the Godhead. Only Moses is ever said to have encountered God “face-to-face” (*Exod.* 33:11, “as a man speaks to his friend”), yet later in that chapter (v.20) Moses is denied such (a public ?) visual manifestation of God’s face, but is allowed to see only his “back”. Jonathan Burnside, “The Hidden Face of the Law-Giver : Revelation and Concealment in the Giving of the

This is hardly surprising when we compare modern legal phenomena¹⁰². We have visual stereotypes of honest and dishonest speech behaviour. An on-line legal dictionary defines a “credible witness” as “a witness whose testimony is more than likely to be true based on his/her experience, knowledge, training and *appearance* (emphasis supplied) of honesty and forthrightness, as well as common human experience”¹⁰³. Psychological studies have indicated that facial abnormality affects judgments as to honesty and attractiveness of personality¹⁰⁴. And the very notion of “narrative typifications of action” is readily translatable into (or from) narrative images¹⁰⁵.

4.2. The Language of “Biblical law”

There is every reason to believe that many laws in the Bible were written formulations of oral custom. That in itself makes it problematic to adopt a “literal meaning” approach, much less an approach modelled on modern statutory interpretation¹⁰⁶, to them. The very expression “literal meaning” presupposes a written text, but I have argued, building on studies of the distinction between orality and writing (particularly, those of Walter Ong), that we should at least consider the possibility that these laws reflect an “oral residue”, this being not merely a matter of the medium of transmission but also reflecting a different way of using language. Specifically, the literal (or semantic) approach to meaning involves asking what range of situations the words of the rule “covered”. By contrast, a narrative approach (characteristic of everyday speech) would ask what narrative images of *typical* behaviour were *evoked* by the words of the rule¹⁰⁷. Thus, when it comes to application of the rule to

Law at Mount Sinai”, to be published in a forthcoming Festschrift for Josef Fleishman, seeks to resolve the difficulty by taking *panim el panim* (“face-to-face” : *Exod.* 33:11) non literally : “‘Face to face’ is simply a way of conveying direct, unmediated, communication between two parties. The modality connotes intimacy in contrast to the sense of distance experienced by Israel”.

101 See further B.S. Jackson, “Envisaging Law”, *IJSL/RISJ*, VII/21, 1994, pp. 311-334, on the apparent primacy of visual perception in biblical culture and elsewhere. See however M. Carasik, “To See a Sound : A Deuteronomistic Rereading of Exodus 20:15”, *Prooftexts*, 19, 1999, pp. 257-265, on Deuteronomistic texts which seek to reinterpret the Exodus verse to privilege aurality. — For modern claims of the primacy of visual perception, see *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 42-43 ; “Envisaging Law”, *op. cit.*, p.317, on the greater capacity to remember faces than voices, and pp. 326-32, including the argument of R. Jackendoff, *Patterns in the Mind. Language and Human Nature*, Hemel Hempstead, Harvester Wheatsheaf, 1993, pp. 171-183, esp. 177 for a “visual grammar”, apparently comparable in status to the Chomskyan model. Whether the mind incorporates functions for separate forms of sense perception is contested. Piaget saw them all as functions of general intelligence : J. Piaget, *Biology and Knowledge*, Edinburgh, Edinburgh University Press, 1971, esp. 46f., cited at “Envisaging Law”, *op. cit.*, p. 330.

102 As in the adage that justice must not only be done but must be seen to be done. For discussion of the biblical story of Solomon’s judgment (*1 Kings* 3:16-28) in this context, see *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 66-68 ; “Envisaging Law”, *op. cit.*, pp. 322-24.

103 <http://legal-dictionary.thefreedictionary.com/Credible+witness>.

104 R. Bull, “The Influence of Stereotypes on Person Identification”, in D.P. Farrington, K. Hawkins and S.M. Lloyd-Bostock (eds.), *Psychology, Law and Legal Processes*, London, MacMillan, 1979, pp. 188-192. E. Goffman, *Stigma : Notes on the Management of Spoiled Identity*, Englewood Cliffs, N.J., Prentice-Hall, 1963, argued that we take something abnormal about a person to indicate that they are totally abnormal.

105 As in my formulation in the next section: “By contrast, a narrative approach would ask (characteristic of everyday speech) what narrative images of *typical* behaviour were *evoked* by the words of the rule.”

106 On the anachronism of assuming that “if...” in a biblical law is to be understood as “if and only if ...”, see B.S. Jackson, “Ruth, the Pentateuch and the Nature of Biblical Law : In Conversation with Jean Louis Ska”, in Konrad Schmid and Federico Giuntoli (eds.), *The Post-Priestly Pentateuch. New Perspectives on its Redactional Development and Theological Profiles* (Ska Festschrift), Tübingen, Mohr Siebeck, 2015, pp. 77, 79, 96.

107 “Significato letterale. Semantica e narrativa nel diritto biblico e nella teoria contemporanea del diritto”, *Ragion Pratica*, 12, 1999, pp. 153-177 ; English version : “Literal Meaning : Semantics and Narrative in Biblical Law and Modern Jurisprudence”, *IJSL/RISJ*, 13/4, 2000, pp. 433-457 ; *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 75-82.

particular situations, the question is not whether that situation falls within the semantic meaning of the words, but rather whether it is sufficiently similar (in the sense described above¹⁰⁸) to the narrative which the words evoked, to justify its application. This was a development of the argument I had used in relation to decision-making in hard cases in secular law, but it seemed to fit more generally the weak institutional context of Biblical law¹⁰⁹, and I used it more systematically in a later book on what is generally regarded as the earliest biblical collection of laws, Exodus 21-22¹¹⁰.

4.3. Principles / Values of “Biblical law”

How are we to establish any underlying principles of biblical law? In 1960, a well-known biblical scholar, Moshe Greenberg, had advanced the theory that Biblical law was distinguishable from the laws of the ancient Near East in terms of their underlying “postulates”: specifically, that life and property were “incommensurable” in Biblical law, whereas they were commensurable in the ancient Near East: “in biblical law life and property are incommensurable; taking of life cannot be made up for by any amount of property, nor can any property offence be considered as amounting to the value of a life”¹¹¹. Greenberg explained this in terms of underlying ideology: “In the biblical law a religious evaluation; in non-biblical, an economic and political evaluation, predominates”¹¹². In the 1970s, I responded to this on the positivist argument that no such statement of principle was to be found in the Bible, and counter-examples could be cited¹¹³. Greenberg replied, seeking to neutralise the counterexamples, and arguing for the possibility of inference of underlying principles¹¹⁴ in what I described as a Kantian manner (and which I compared to the methodology of Ronald Dworkin)¹¹⁵. The latter struck me as uncharacteristic of the level of cognitive development manifest in the biblical sources. But I retreated from the view that the discovery of such principles was impossible, and proposed rather that we conduct the search using a semiotic methodology: looking for the underlying oppositions reflected in literary sequences of laws juxtaposed to each other.

For example, Exodus 21 commences with two paragraphs regarding debt slavery, the first for a man, the second for a woman. For a man, the debt slavery is limited to a period of six years, during which the master may give the slave a woman slave of his, but at the end of the six-year period he goes free while the woman and any children she has by him remain in slavery. In the case of the woman, on the other hand, if she is taken as a wife or concubine in the household of the creditor, she remains there in perpetuity, with the status of a daughter. Taking the two paragraphs together, we may infer

108 Section 2.1, paragraph ending with note 27.

109 *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 82-92.

110 *Wisdom-Laws*, *op. cit.*

111 “Some Postulates of Biblical Criminal Law,” in M. Haran (ed.), *Yehezkel Kaufman Jubilee Volume*, Jerusalem, Magnes Press, 1960, pp. 5-28, at 18.

112 *Ibid.*, at 19.

113 *Essays in Jewish and Comparative Legal History*, Leiden, E.J. Brill, 1975, pp. 25-63, reprinted from “Reflections on Biblical Criminal Law”, *Journal of Jewish Studies*, 24, 1973, pp. 8-38, and *Essays*, *op. cit.*, pp. 64-74, reprinted from “Principles and Cases: The Theft Laws of Hammurabi”, *The Irish Jurist*, 7, 1972, pp. 161-170.

114 M. Greenberg, “More Reflections on Biblical Criminal Law”, in S. Japhet (ed.), *Studies in Bible*, Jerusalem, Magnes Press, 1986, pp. 1-17.

115 *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 180-81.

that a man may be used for breeding purposes without altering his status, but a woman may be used for such purposes only if given a permanent status within the household¹¹⁶.

4.4. Reiteration and (forms of) Recognition

Reiteration is a feature of covenants with God in the Bible. It functions, as I have argued as a form of “recognition”¹¹⁷. Elsewhere in the Bible, we find an example of reiteration where the text itself provides an explanation of its significance : the account of Joseph’s interpretation of Pharaoh’s dreams (*Gen.* 41:25-32) : first Pharaoh dreams about seven thin cows consuming seven fat ones, then (a separate dream : we are told, “And Pharaoh awoke. And he fell asleep and dreamed a second time”) he dreams about seven thin ears of corn swallowing up seven fat ears (*Gen.* 41:1-7). Joseph is ultimately summoned to interpret the dreams. He commences by saying (*Gen.* 41:25) : “The dream of Pharaoh is one ; God has revealed to Pharaoh what he is about to do”. Two quite different dreams — presented explicitly as forms of divine revelation — with a single (very specific) message. Why were two dreams required ? The narrator has Joseph address the question directly : “And the doubling of Pharaoh’s dream means that the thing is fixed by God (*ki nakhon hadavar me’im ha’elohim*), and God will shortly bring it to pass” (*Gen.* 41:32). The effect of the doubling is thus a meta-message, here a message about the pragmatic force of the message : it is firmly determined, and to be implemented immediately. I have suggested that this may be significant also for the reiteration of law in Deuteronomy (inter alia recapitulating, with variations, laws from Exodus 21-22) : that reiteration is set in the plains of Moab, forty years after the giving of the law at Sinai and immediately before entry into the promised land, but repeating many of the themes (if not the same detail) of the latter. Here, too, it might be said that “the thing is fixed by God, and God will shortly bring it to pass”, since it was only on entry to the promised land that significant parts of the law were capable of being implemented¹¹⁸.

In both narratives, reiteration expresses a form of recognition of what is reiterated ; in the first (Pharaoh’s dreams), the text sets out quite explicitly the form of recognition : the pragmatic force of the utterance as a divine revelation designed to guide action in the immediate future, and this also fits the narrative context of reiteration of the law in the plains of Moab.

4.5. A unified system ? Law and Narrative in the Bible

The relationship between “legal” and “narrative” sources has been one of the major themes of my work in Biblical law. Hence my most recent preoccupation, the biblical Book of Ruth. I felt impelled at least to enquire whether there existed any analyses of the Book from a Greimasian viewpoint, and my attention was directed by Jean-Claude Giroud to a 1973 Paris *Mémoire* by Corina

116 *Ibid.*, pp. 193-197, and other examples : i) from the laws of damages caused by animals : *ibid.* pp. 187-193 and, in a comparative context, “Liability for Animals : An Historico-Structural Comparison”, *IJSL/RISJ*, 24/3, 2011, pp. 259-289 ; ii) from the sequence of rules within the Decalogue : *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 197-202, and pp. 202-207, *ibid.*, for further discussion of the model. See also, more briefly, *Wisdom-Laws*, *op. cit.*, pp. 166-171; “On the Values of Biblical Law and their Contemporary Application”, *Political Theology*, 14/5, 2013, pp. 602-618, at 603-611.

117 *Studies in the Semiotics of Biblical Law*, *op. cit.*, ch. 9.

118 “Mediation and Immediacy in the Jewish Legal Tradition”, *op. cit.* ; B.S. Jackson, *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 209-213.

Galland : *Ruth. Approches structurale d'un récit biblique*. This text arrived at a stage when my (non-semiotic) research on the text was relatively advanced. It proved a useful indication of what the deployment of basic Greimasian categories can add to our understanding of the text, but it fell far short of providing any full understanding of the text in all its richness and subtlety. However, I had already staked out a basic “Greimasian” methodological position, rather distant from that of conventional biblical studies, for approaching the Book¹¹⁹. More recently, I encountered a commentary by André Wénin¹²⁰, which, though not overtly Greimasian, has significant elements in common. Wénin notes that chapters 2 and 3 of the Book both commence with a plan, continue with the execution of the plan and conclude with a conversation recognizing the nature / extent of the success of the plan. Chapter 3, on the night time encounter at the threshing floor, has a parallel structure to that of ch.2 : Ruth is instituted in vv.1-5 as the subject of a quest to obtain Boaz as a husband ; later, on her return to Naomi, laden with six measures of barley, she recounts what has happened and Naomi recognizes that there is still unfinished business but is confident of a successful outcome. My own most recent work on the book examines two distinct (gender related) recognition scenes in the final chapter¹²¹.

As against the very common assumptions of many commentators on Ruth, who (i) treat Torah law as “statute” in the modern sense¹²² and (ii) seek to interpret apparently deviant practices in the narratives intertextually, as conforming (or not) to the laws found elsewhere in the Bible, I argued that the narratives may sometimes reflect practices (not necessarily universal) taken to be normative but which reflect different periods or locales¹²³. But there are also important historical questions debated in traditional biblical scholarship : when was the narrative (if considered a unity) written, and for what purpose ?

The relationships between the legal, literary and historical approaches present complex methodological problems. Taken separately, we may think that each is approachable via its own, separate and appropriate, disciplinary methods. But semiotic theory suggests a more integral approach, that of three inter-related axes : the syntagmatic axis is the line of the plot, the sequence of events of the narrative ; the paradigmatic (“associative”) axis is the use within the syntagmatic axis of elements of meaning (including, in our context, legal meanings) drawn from elsewhere ; the pragmatic axis focuses on the users of the text (including its authors), and their communicative purposes. All three of these axes are primarily represented in the Hebrew Bible in different texts : narratives, laws and historical accounts. We may identify, for present purposes, the Book of Ruth as our narrative (syntagmatic axis) ; various pentateuchal laws, esp. in Leviticus and Deuteronomy, as our laws (paradigmatic axis) ; and passages in Ezra and Nehemiah, dealing with intermarriage, as our historical

119 “Law and Narrative in the Book of Ruth : A Syntagmatic Reading”, pre-publication version available at SSRN (December 20, 2015) : <http://ssrn.com/abstract=2706017> and on Academia.edu : <https://lhu.academia.edu/BernardJackson>

120 André Wénin, *Le livre de Ruth. Une approche narrative*, Paris, Cerf, 1998.

121 Jackson, “Acknowledgement and Recognition in Biblical Law”, *op. cit.*

122 Thus importing into their hermeneutics the (non-necessary) logical assumption, derived from modern statutory interpretation, that “if X” means “if and only if X” (so that, in this context, “if brothers live together” (Deut. 25:5) means “if and only if brothers live together”), a particular implication of the ideology of comprehensiveness (see n. 106, above).

123 See further my “Ruth, the Pentateuch and the Nature of Biblical Law : In Conversation with Jean Louis Ska”, in Konrad Schmid and Federico Giuntoli (eds.), *The Post-Priestly Pentateuch. New Perspectives on its Redactional Development and Theological Profiles* (Ska Festschrift), Tübingen, Mohr Siebeck, 2015, pp. 75-111.

account (pragmatic axis). But how, methodologically, do we go about addressing their interrelationship? Not, I would suggest, by putting them all into a single pot and stirring. For each of these sources is, quite simply, a text, and we need to address the syntagmatic, paradigmatic and pragmatic axes of each text independently, as best we can, before we can attempt any synthesis.

In short, I argued, first, for the priority of the syntagmatic over the paradigmatic axis, at least in the sense that it is the former which gives sense to the manner in which the latter is constructed in that text, and priority should be given to this rather than imposing a paradigmatic axis derived from external sources. More specifically, the legal elements should be interpreted, first and foremost, in terms of the sense they make in the narrative, rather than in intertextual terms. Only thereafter may we consider the intertextual relations (which may well have been unavailable to the original audience, whether that within the text or outside). But there is also a second methodological issue. To what extent should we seek to reconstruct the pragmatics of the text (to an extent, already incorporated within the Greimasian narrative syntax in the form of “recognition”) by giving priority to the internal resources of the text itself, rather than external sources? The substantive issue here is the relationship between the Book of Ruth (whose story involves the return from exile of a partially intermarried family) and the politics of the “Restoration period” after the return from the Babylonian exile, a period which includes the accounts of the attempt by Ezra to expel foreign wives. While traditional biblical scholarship addresses this issue in historical terms, asking whether the Book of Ruth “fits” what we think we know about the restoration period (from, primarily, the books of Ezra and Nehemiah), it is worth attempting, in my view, to reverse the procedure, and consider what possible light the Book of Ruth may cast upon the restoration period, making the assumption, for the purposes of the argument, that this represents its dating. Although the narrator sets the Book of Ruth in a far earlier Biblical period, that of the Judges (before the establishment of the Davidic monarchy), he also provides an indication (*Ruth* 4:7) that he is actually addressing a later audience not familiar with the earlier practices. Adoption of such a methodology would take us a step further in the application of the “narrativisation of pragmatics”.

Despite the various uses I have made of semiotics (broadly conceived) in my studies of Jewish law in recent years, I have not as yet attempted any detailed application of the narrative syntagm to a particular text. But one of my former students, Jonathan Burnside, with some modest guidance from me, has recently done just that, in what I regard as a very fruitful, but non-reductive, application¹²⁴. This, together with other encouraging signs I detected in Turin, suggest that there is, indeed, a future for Greimasian semiotics in the generations to come.

4.6. Legal concepts and institutions

Examining further the methodological problems presented by the Book of Ruth, we encounter an even more fundamental issue. It is not merely the legitimacy or otherwise of reading a narrative text in the light of an external “legal” text; rather, it is the very nature of the “legal concepts” themselves. Commentators on Ruth happily use terminology like “conversion”, “marriage”,

¹²⁴ Jonathan Burnside, “Why Was Moses Banned from the Promised Land? A Radical Retelling of the Rebellions of Moses (Num. 20:2-13 and Exod. 2:11-15)”, forthcoming.

“adoption”¹²⁵, despite the fact that the original Hebrew contains no such abstract terms ; moreover, such terms are often simply assumed to be “legal”.

Such thinking is simply anachronistic. It is a residue of Roman legal thinking¹²⁶ and its development in the German legal conceptualism which the 19th century German jurist Rudolf von Jhering (rightly or wrongly¹²⁷) parodied in his dream of the “heaven of legal concepts”¹²⁸, thus comparing legal concepts to ideal Platonic forms¹²⁹.

The semiotician, rather, should ask (a) what are the narrative patterns of human behaviour reflected in such concepts ? ; and (b) by what process of recognition is the modality of “legal” attributed to them ? And here, we may profit from a significant diachronic dimension. David Daube noted the following progression in the development of (here, Hebrew¹³⁰) legal terminology. Legal systems, he argued, express themselves in verbal forms — “if a man steals” — before they adopt nominal forms — “theft”¹³¹. However, the Hebrew legal term translated “theft” (*genevah*) may either be an action noun (the act of thieving) or a legal concept (theft). In the Hebrew Bible, it is not yet found in the latter sense : in *Exodus* 22:3 it actually means “the stolen property”. Daube notes that the speed of this development will not be uniform in all spheres, an observation similarly made of child development¹³². But Daube was in no doubt as to the frequency of such developments, or their significance :

To put it at its lowest, there has been some reflection on the activity in question, there is some trend towards abstraction, systematization, classification, perhaps, and the thing is becoming more of an institution (...). This kind of development is met throughout the entire realm of language, in all areas of human engagement, in philosophy, science, politics, architecture, everywhere. Its neglect vitiates or simplifies much of the intellectual

125 On this last, see my “Acknowledgement and Recognition in Biblical Law”, *op. cit.*

126 From the second century CE student textbook by Gaius, entitled the *Gai. Institutionum Commentarii Quattuor*.

127 See H.-P. Haferkamp, “Begriffsjurisprudenz / Jurisprudence of Concepts”, <http://www.enzyklopaedie-rechtsphilosophie.net/inhaltsverzeichnis/19-beitrag/105-jurisprudence-of-concepts>.

128 “Im juristischen Begriffshimmel”, in his *Scherz und Ernst in der Jurisprudenz*, Leipzig, Breitkopf & Härtel, 1884, translated, inter alia, in M.R. Cohen and F.S. Cohen, *Readings in Jurisprudence and Legal Philosophy*, Boston and Toronto, Little Brown & Co., 1951, pp. 678-89 ; see also F.S. Cohen, “Transcendental Nonsense and the Functional Approach”, *Columbia Law Review*, XXXV/6, 1935, pp. 809-849 ; H.L.A. Hart, “Jhering's Heaven of Concepts and Modern Analytical Jurisprudence”, in F. Wieacker & C. Wollschläger (eds.), *Jherings Erbe. Göttinger Symposium zur 150. Wiederkehr des Geburtstags von Rudolf von Jhering*, Göttingen, Vandenhoeck & Ruprecht, 1970, pp. 68-78, reprinted in Hart's *Essays in Jurisprudence and Philosophy*, Oxford, Oxford University Press, 1983, pp. 265ff.

129 Cf. N. MacCormick, *Law as Institutional Fact*, Edinburgh, University of Edinburgh Press, 1973, reprinted in *The Law Quarterly Review* 90, 1974, pp. 102-29 (with evident embarrassment) : “Plato thought that the idea of beds was logically prior to the existence of any particular bed ; that has always seemed to me a singularly implausible view in relation to brute facts ; but at least the world of legal institutions is a world safe for Platonists ; whether that is good or bad publicity for the world of legal institutions I should not care to say, but it is clear that the institution as a concept is logically prior to the existence of any instance of it” (1973, at p. 9).

130 Cf. the Roman drafting progression regarding theft (*furtum*), as per F. Schulz, *History of Roman Legal Science*, Oxford, Clarendon Press, 1946, pp. 64, 66, as noted in my *Studies in the Semiotics of Biblical Law*, *op. cit.*, p. 94.

131 *Roman Law, Linguistic, Social and Philosophical Aspects*, Edinburgh, Edinburgh University Press, 1969, pp. 11-63 ; B.S. Jackson, *Studies in the Semiotics of Biblical Law*, *op. cit.*, pp. 94-95.

132 See further my “Historical Aspects of Legal Drafting ...”, *op. cit.*, pp. 362-63 ; “Legal Drafting in the Ancient Near East ...” *op. cit.*, pp. 60f.

history of civilization (...). (It produces) a revolutionary new picture of the unfolding of thought.¹³³

His observation that “the thing is becoming more of an institution” implies a degree of organisation within the concept, and indeed this idea has been greatly developed in modern times, with the development in legal philosophy of institutional theories of law. A pioneer in this field was Neil MacCormick. An institution, he maintained, consists in three sets of rules: *institutive* (sometimes termed, constitutive) rules¹³⁴, which lay out conditions for the creation of an instance of the institution (such as marriage) ; *consequential* rules, which regulate the effects of the institution while it exists ; and *terminative* rules, which lay down the conditions for bringing that instance of the institution to an end. This model, I have argued, has significant parallels to the Greimasian narrative syntagm¹³⁵.

MacCormick appears to adopt a model of necessary and sufficient conditions for the creation and termination of an instance of an institution, with the formula : “If a person having qualifications *q* performs act *a* by procedure *p* then if the circumstances are *c*, then a valid instance of the institution *i* exists”¹³⁶. Later, however, he softens this into “ordinarily necessary” and “presumptively sufficient” conditions¹³⁷ — a position which has prompted some commentators to wonder whether he is really talking about legal or social institutions¹³⁸. The distinction has both semiotic and diachronic dimensions. Social institutions may “harden” into legal, given appropriate political structures ; such hardening may or may not be accompanied by a differentiation in terms of lay or professional semiotic groups. In the Book of Ruth any conditions imported from the normative pentateuchal sources must indeed be only “ordinarily necessary” and “presumptively sufficient”. I would prefer to say that the institutions there portrayed are social rather than legal (in the modern sense), and are eminently negotiable¹³⁹.

4.7. Rabbinic Law : Rules, Truth or Trust

Modern secular law prides itself on its objectivity. The classic account of how this works is that of the legal philosopher H.L.A. Hart, for whom legal systems were characterised by the “union of primary and secondary rules”¹⁴⁰. “Primary rules” were the rules of substantive law ; “secondary rules” were the rules which determined how the legal system worked, and included in particular “rules of recognition” formulated so as to provide a “conclusive affirmative indication” as to whether a purported primary rule was (recognised as) valid or not. This model thus generated the

¹³³ *Roman Law, op. cit.*, pp. 11-12.

¹³⁴ The institution, he argues (*Law as Institutional Fact, op. cit.*, p. 9), is reified “by naming it” — a striking parallel to Greimas/Landowski’s view of *production juridique*, sec. 1.1 above.

¹³⁵ B.S. Jackson, *Semiotics and Legal Theory, op. cit.*, pp. 168-70 ; *id.*, “Introduction : Semiotics and Institutional Theory”, *op. cit.*

¹³⁶ N. MacCormick, *Law as Institutional Fact, op. cit.*, p. 19f., quoted at Jackson, *Semiotics and Legal Theory, op. cit.*, p. 170.

¹³⁷ N. MacCormick, *ibid.*, pp. 24-27.

¹³⁸ B.S. Jackson, “Introduction : Semiotics and Institutional Theory”, *op. cit.*

¹³⁹ Biblical society is a predominantly oral culture, and cf. Sbisà and Fabbri, “Models (?) for a Pragmatic Analysis”, *op. cit.*, on negotiable speech acts, above.

¹⁴⁰ In his *Concept of Law, op. cit.* See further above, s. 2.1.

“demonstrability thesis” : with little exception, one could always know, objectively, what the law was¹⁴¹. One might, perhaps, expect a system of religious law to be even stronger (“more objective”, if that were possible). But this turns out, in the case of Jewish law, not to be the case. The end result, in my view, is that the system depends on *trust* rather than *truth*, and what it “demonstrates” is the mediation of semantics via the narrativisation of pragmatics¹⁴².

In the course of a five-year research project I directed at Manchester¹⁴³ on the vexed, practical problem of the “chained wife” (*agunah*) whose husband refuses to co-operate with the court in granting his wife a divorce (a *get*), thereby preventing her remarriage, and rendering any subsequent relationship she may enter adulterous and the children thereof “illegitimate” (*mamzerim*), we discovered that what modern legal philosophers call the “rules of recognition” of the legal system remain, in Jewish law, subject to significant controversy. Thus :

i) The rule of majority decision itself,¹⁴⁴ often regarded as the most basic “secondary rule” of Jewish law, is subject to a major controversy : does it apply only to the authorities of the current generation or does it extend to cross-generational disputes, where the participants had no opportunity for dialogue¹⁴⁵ ?

ii) An alternative to seeking a cross-generational majority is the rule that, as amongst post-talmudic authorities, later opinions are followed in preference to earlier ones (*hilkheta kebatra’ei*), on the assumption that the later authorities took the earlier ones into account. But this is qualified where earlier sources are discovered, of which the later authorities were unaware¹⁴⁶. That leaves the contemporary judge with *discretion* not to follow the later authority on the grounds that the latter’s decision might have been different had he been aware of this (later discovered) earlier authority. The criteria for the exercise of this discretion are stated in some detail in the 20th century *Enzyklopedia Talmudit*. One of my colleagues in the Agunah Research Unit analysed its formulation, and found eight different areas of ambiguity in it¹⁴⁷.

iii) Uncertainties also exist in such areas as the status of newly-discovered MS sources¹⁴⁸, and,

141 On all this, see *Making Sense in Jurisprudence*, *op. cit.*, ch. 7, including the extent to which Hart ultimately modified his view in the light of Dworkin’s critique and his assertion that the legal system includes principles as well as rules : see further above, s. 2.1.

142 See also “Some Preliminary Observations on Truth and Argumentation in the Jewish Legal Tradition”, in B. Melkevek (ed.), *Standing Tall : Hommages à Csaba Varga*, Budapest, Pázmány Press, 2012, pp. 199-207 ; “Trust in(g) Eric”, in *As interações sensíveis*, *op. cit.*, pp. 92-99. Trust has become a concern of the sociology, if not the philosophy of law, as may be seen from the 2012 Milan PhD of Mariana Zuleta Ferrari, “Social Capital, Trust and Legal Institutions” and her recent “Trust in Legal Institutions : an Empirical Approach from a Social Capital Perspective”, *Oñati Socio-Legal Series*, 6/5, 2016, pp. 1141-1170 (both available on-line). In both, she cites M. Rosenfeld for the view that law is not based on trust : “Trust is based on faith and solidarity, whereas law is a matter of rational expectations, based on the internalisation of legal norms”. But that begs the questions of the what and how of “the internalisation of legal norms” — precisely the issues which the narrativisation of pragmatics seeks to address.

143 <http://www.manchesterjewishstudies.org/agunah-research-unit/> with downloadable publications from its Publications page. See also Jackson, “Philosophy of Law ...”, *op. cit.*, pp. 50-52.

144 *Baba Metsia* 59b (the “Oven of Okhnai”), discussed in section 4a of “Mediation and Immediacy...”, *op. cit.*

145 See further Y. Abel, “Halakhah – Majority, Seniority, Finality and Consensus”, Section I (Working Papers of the Agunah Research Unit, June 2008, no.7, available at <http://www.manchesterjewishstudies.org/publications/>).

146 *Shulxan Arukh -oshen Mishpat* 25:3 and *Rema*. See B.S. Jackson, *Agunah : The Manchester Analysis*, Liverpool, Deborah Charles Publications, 2011, pp. 61-62.

147 Y. Abel, “Halakhah – Majority ...”, *op. cit.*, pp. 8-10 ; B.S. Jackson, *Agunah...*, *op. cit.*, pp. 62-63.

148 *Agunah...*, *op. cit.*, pp. 64-67.

iv) in the status and identification of the “leading authorities of the day” (*gedolay hador*).

Indeed, doubts as to what is authoritative in the system are so extensive that a (creative) *doctrine of doubts* has developed, granting authority to deviate from the strict law in the direction of leniency¹⁴⁹ in various types of case given the existence of different levels of doubt : a single doubt relating to an issue of rabbinic status is sufficient to justify exercising leniency ; a single doubt relating to an issue of biblical status is not sufficient to justify exercising leniency, but a double doubt is sufficient¹⁵⁰.

Yet reliance on these rules regarding doubt is discretionary. In the absence of any universally accepted central rabbinic authority, different rabbinic courts will exercise that discretion in different ways. Some may even deny that the discretion exists. Is there an objectively correct answer to this question ? Despite the continuing endorsement by some influential rabbinic voices of a positivist-inspired objectivity¹⁵¹, the better answer — and one, I would maintain, itself supported by Jewish tradition — is that the *halakhah* is based at least as much on the concept of trust¹⁵² as on that of truth¹⁵³.

We should not, moreover, assume a universal conception of “truth”. The Rabbi, philosopher and theologian Steven Schwarzschild wrote : “In Judaism truth is primarily an ethical notion : it describes not what is but what ought to be”¹⁵⁴, citing the association of truth with ethical notions in the Bible¹⁵⁵ and rabbinic literature¹⁵⁶. Hermann Cohen designates the normative unity of cognition and ethics as “the fundamental law of truth”¹⁵⁷. And Martin Buber is said to identify faith (*emunah*¹⁵⁸) with truth, here conceived as interpersonal trust¹⁵⁹. And such conceptions derive support from classical rabbinic sources. There is a talmudic passage where a heavenly voice (*bat qol*) affirms apparently contradictory opinions of the rival rabbinic schools of Hillel and Shammai (*Erubin* 13b) in the words “these and these are the words of the living God”, but concludes that in practice one should follow the views of the School of Hillel. The Talmud then asks :

149 Or, in more theological terms, mercy.

150 B.S. Jackson, “Philosophy of Law : Secular and Religious ...”, *op. cit.*, p. 52 ; *id.*, *Agunah...*, *op. cit.*, pp. 55-63.

151 E.g. Rabbi J. David Bleich.

152 See the conclusion to my “Constructing a Theory of Halakhah”, *op. cit.*, pp. 24-25.

153 Whether the attribute of “truth” may be attached to legal propositions is discussed, in the secular context, by A. Pintore, *Il Diritto Senza Verità*, Torino, Giappichelli, 1996, translated as *Law without Truth*, Liverpool, Deborah Charles Publications, 2000.

154 S. Schwarzschild, “Truth”, *Encyclopedia Judaica*, Jerusalem, Keter, 1973, XV, pp. 1414-15, at 1414. See further Jackson, “Some Preliminary Observations ...”, *op. cit.*, pp. 201-202.

155 Peace (*Zechariah* 8:16), righteousness (*Malachi* 2:6ff.), grace (*Genesis* 24:27, 49), justice (*Zechariah* 7:9), and even salvation (*Psalms* 25:4ff.).

156 *Mishnah Avot* 1:18, “The world rests on three things — truth, justice, and peace”.

157 *Ethik des reinen Willens*, Berlin, B. Cassirer, 1904, ch.1.

158 *emunah* is frequently attributed to God in Jewish liturgy. In context, it clearly refers to human perception of God’s trustworthiness, rather than to human adherence to any abstract truth-claim. Does this sell out any “hard” conception of truth ? In the theological context, the believer may reasonably say : “My belief that X is true is based on my faith in the truthfulness / trustworthiness of my source of information (God), which is far more reliable than any attempt I might make at independent confirmation” (thus explicitly mediating semantics via a narrativised pragmatics).

159 Schwarzschild, *op. cit.*, p. 1415. See M. Buber, *Two Types of Faith*, London, Routledge & Paul, 1951, pp. 7-12. On Buber’s non-referential conception of truth, and its relation to the I-Thou relationship, see E. Levinas, “Martin Buber and the Theory of Knowledge”, in P.A. Schilpp (ed.), *The Philosophy of Martin Buber*, London, Cambridge University Press, 1967, pp. 133-150, at 141-144.

... what was it that entitled Beth Hillel to have the *halakhah* fixed in agreement with their rulings? — Because they were kindly and modest, they studied their own rulings and those of Beth Shammai, and were even so [humble] as to mention the action of Beth Shammai before theirs.

This indicates a “pragmatic” (in the linguistic sense) criterion for the “pragmatic” (i.e. practical) resolution of the conflict: the School of Hillel merit greater trust because of their superior (in Habermasian terms) conversational ethics.

The tension between truth and trust is also reflected in a story told of the relations between two leading 19th century rabbinic authorities:

R. Hayyim of Brisk had a query regarding a practical matter. He decided to turn to the leading authority of these times, R. Isaac Elhanan of Kovno [Kaunas]. He wrote: “These are the facts and this is the question; I beg you to reply in a single line — ‘fit’ or ‘unfit’, ‘Guilty’ or ‘not Guilty’, without giving your reasons”. When R. Hayyim was asked why he had done so, he replied: “... decisions of R. Isaac Elhanan are binding because he is the *Posek* of our generation, and he will let me know his decision. But in scholarship and analysis my ways are different from his and if he gave his reasons I might see a flaw in it and have doubts about his decision. So, it is better if I do not know his reasons.”¹⁶⁰

R. Hayyim was prepared to trust the decision of R. Isaac Elhanan even though he might disagree with his reasoning. Unlike many modern positivists, he does not see legal decisions as nothing more than the outcome of explicit legal reasoning¹⁶¹. Here, deference was paid to personal status or reputation, in preference to argumentation, to attributes of the *énonciateur* rather than the content of the *énoncé*. And R. Hayyim himself narrativises his preference for the pragmatic over the semantic criterion.

5. Conclusions

5.1. Substantive conclusions

So how different (semiotically) is religious law from secular law? Some postmodernist thought has rejected any essential difference on theoretical grounds. Goodrich, for example, attributes a kind of legal theology to secular law, regarding the Constitution as the locus of a (hidden) eternal presence¹⁶².

160 See M. Elon, “More about Research into Jewish Law”, in B.S. Jackson (ed.), *Modern Research in Jewish Law*, Leiden, E.J. Brill, 1980, pp. 66-111, at 89-90 n. 52. At “Some Preliminary Observations ...”, *op. cit.*, pp. 206-207, I associate this with a “procedural” approach to truth, that the truth of the legal decision (*psak*) is a function of the procedure of the appointment of the judge and his proper conduct of the proceedings, rather than of the argumentation he has used.

161 See sec. 2.1 above: “...despite the naive legal assumption that reasons stated by judges in their judgements represent fully and accurately the very bases of their decisions”; further at *Making Sense in Jurisprudence*, *op. cit.*, pp. 233-36.

162 P. Goodrich, *Languages of Law: From Logics of Memory to Nomadic Masks*, London, Weidenfeld and Nicolson, 1990, p. 6.

Greimasian semiotics, on the other hand, would locate the difference more precisely. First, the particular senses of the “legal”, “secular” and “religious” need to be determined, privileging the construction of those concepts in the particular discourse, even if that discourse is thought to have incorporated a sense originating elsewhere (whether in literary or other sources). Second, it should be recognised that none of these concepts are essential elements of the behaviour patterns in question ; rather, they are modalities attributed in the process of recognition, and that very process may need to be considered also from the perspective of the narrativisation of pragmatics¹⁶³. At this point, a caveat must be introduced : my work has dealt with only one secular¹⁶⁴ and one religious system, although the two chronologically polar points of the development of Jewish law (biblical and modern rabbinic) may well be counted as two independent systems, despite their diachronic relationship.

Though my conclusion regarding the relationship between truth or trust was arrived at largely through the research project on contemporary Jewish divorce law (section 4.7, above), there is reason to suspect its pertinence also to secular law. Critical theorists have long maintained that the objectivity of the legal system is an ideological construction, designed to preserve while concealing the play of power, through invoking logic and in other ways¹⁶⁵. But there are good semiotic reasons to prioritise trust : *trust* is an interpersonal relationship, thus integrally involved in pragmatics ; *truth* (on the Saussurean approach to reference) is merely a claim, which must take account also of the narrativisation of pragmatics.

There are also more particular conclusions to be drawn for the semiotics of law, these being common to the very different legal systems I have studied. They may here be very briefly summarised :

i) Studies of both indicate the presence of different semiotic groups, distinguishable, i.a., by levels of cognitive development : professionals and laity in modern legal systems ; rural (oral) vs urban (literate) groups in biblical literature.

ii) There is from both even stronger (more empirical) confirmation of the conclusions of *Semiotics and Legal Theory* as to rejection of the notion of the unity of legal system¹⁶⁶. (For biblical law, see esp. 4.5 above).

iii) A legal realist agenda is endorsed. Despite separate semiotic groups, the human tendency to make sense in narrative terms (more particularly, the sense common to particular social groups) cannot be completely elided, even though problems of communication *across* semiotic groups are not eliminated¹⁶⁷.

iv) Narrative structures underlie judicial decision-making (to be distinguished from legal justification), as demonstrated in different ways by both *Riggs vs Palmer*¹⁶⁸ and the “Brother Daniel” case (sec. 3.4).

163 On the latter, see esp. Introduction, secs. 2.1, 3.2.

164 I can hardly be regarded as having engaged with the French legal system, but only with a particular semiotic discourse about it.

165 Dworkin’s invocation of Hercules, a “lawyer of superhuman skill, learning, patience and acumen” (text at n. 32, above) may appear to be a giveaway, but even Hercules seeks to base trust in himself on rationality rather than intuition or other personal characteristics.

166 Text at n. 21, above.

167 See s. 3.3, on the judicial “summing-up” and sec. 3.6 on the criminal verdict.

168 Text at n. 31, above. On “hard cases”, see secs. 2.1 and 4.2 above.

But such conclusions can hardly be restricted to law. Both easy and difficult decision-making occur throughout human life : the models here discussed for the semiotics of law, including the narrativisation of pragmatics¹⁶⁹, may well be of much wider application.

5.2. Methodological implications

The work here reviewed has methodological implications, which may also be of wider application. In general :

i) the importance of a full semiotic analysis of the individual discourse before considering it in the context of intertexts (sec. 4.5);

ii) the need to confront the methodological issues arising from the relationships between the syntagmatic, paradigmatic and pragmatic axes (sec. 4.5), including the relationship between “recognition” (see esp, sec. 4.4) as part of the narrative syntagm and the narrativisation of pragmatics (we might say, in this context, between the story *in* the discourse and the story *of* the discourse: cf. sec. 3.5.) ;

iii) the use of semiotic methodology as a basis for comparison of both synchronous phenomena in a single cultural system, and diachronically (in my case, as a methodology for comparative legal history¹⁷⁰) ;

iv) the mutual enrichment to be gained by an interdisciplinary approach. In the present essay, the principal such source has been psychology (social and developmental). But, more generally, additional questions of semiotic significance may often be identified from the literature of other disciplines. And there is also a strategic reason: semiotics may thereby achieve a wider audience, rather than living in a purely “semiotic bubble”.

And more particularly :

v) the use of semiotic methodology in identifying the distinctions between the foci of different theorists (as in sec. 2.2) ;

vi) the use of semiotic methodology as a tool for analysing the nature of (even the most basic) concepts and institutions (secs. 2.3, 4.6) ;

vii) the problematisation of “literal meaning” as natural and instinctive, as opposed to the evocation of narrative images¹⁷¹ ;

viii) alternative methods of inferring underlying values (sec. 4.3) ;

ix) the enrichment of speech act theory by attention to the narrative context (sec. 4.1).

And then issues only slightly addressed, but calling for deeper study, such as the (both theoretical and practical) issues of the relation between different senses and media of communication¹⁷².

169 Text at n. 27, s. 3.1 (end), 3.2, n. 63, s. 3.5, n. 73, s. 4.4 (end), s. 4.7 above.

170 E.g. “A Semiotic Perspective on the Comparison of Analogical Reasoning ...”, *op. cit.*

171 Sources cited in n. 107 and see sec. 4.2 above .

172 Speech and vision in 3.1 (witnessing), media of revelation 4.1.

5.3. Ontological radicalism

My most recent work in this area has reinforced my view of the importance of a number of basic epistemological positions of Greimasian semiotics (as I understand them) : its referential scepticism (better : its understanding of reference within pragmatics rather than semantics) and its methodology of approaching texts – these leading to what I would take to be its (universally relevant, if implicit) view of the relationship between truth and trust. All of this, in different ways, involves the relationships between syntactics, semantics and pragmatics.

In a recent contribution to a conference on the semiotics of religion¹⁷³, I wrote :

For Greimasian semiotics, “is” and “ought” are simply different modalities applied to behaviour patterns (whose sense is constructed in narrative terms). When we affirm the modality of “is”, we are making a truth claim ; when we affirm the modality of “ought” we are making a validity claim (just as when we go to an art gallery and affirm the beauty of a painting, we are making an aesthetic claim). When we affirm that something is “divine”¹⁷⁴, we are similarly attributing a linguistically-constructed “modality” to it. Is the secular / religious distinction,¹⁷⁵ we may ask, ontological or itself a social construction of sense ?

But this is neither to deny or affirm the reality of either legal or religious experience. Greimasian semiotics is purely descriptive ; its position on sense and reference (the latter being the concern of pragmatics rather than semantics) means that it cannot validate (or invalidate) truth claims within linguistic resources.

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¹⁷³ See n. 87, above, published version forthcoming.

¹⁷⁴ Or, for that matter, “legal”.

¹⁷⁵ Or, for that matter, the “legal / moral” distinction.

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