

Preface

“Law . . . *makes* a world”, the motto of this book declares. But the riddle of law is *how* law does so! The answer is the major theme of this book: through understanding and awareness of how lawyers make meaning. Yet this world, thus made, in turn makes law, and constrains it within its logic and the cultural habits it inculcates. Law makes the world, is made in the reflection of that world and derives its meaning from the assimilation of legal subjects (you and me), those who are meant to incarnate both law and world. Moreover, law sometimes imposes a class structure in the world it makes—distinguishing between subjects and objects of law. The world law makes is populated by a diverse and dizzying variety of objects, subjects, aggregations, personalities, and presumptions whose interactions, constructions, and objectifications are the stuff of meaning making for lawyers as well.

Law, then, does not merely make the world within which it exists; it does more. To make a world requires two distinct actions. The first, the usual object of lawyers, is to fill the world with substance—and lawyers spend their time making meaning of this substance and sometimes making the substance itself. The second, sometimes the object of lawyers, and central to the tasks of judges and legislators in their engagement with law, is the task of making and protecting the boundaries of this world law makes. Beyond law exist other worlds, sometimes as complex as that of law, and always in communication with it; these other forms of compulsion—the “not-law” fields of governance with which lawyers have an increasingly uncertain relationship include, beyond religious, moral, and ethical “worlds”, the worlds of psychology, of economics and philosophy. Lawyers make meaning, and a world, by making law; they also make meaningful boundaries that separate what is allocated to the law-world and everything else. Lawyers serve the structures within which meaning is made, but they also subvert those structures as they make meaning. The legal structures are now stacking side-by-side and atop one another in a world in which meaning has acquired a global dimension. That last has both broadened and changed the parameters for meaning making and the toolkit available for lawyers engaged in their work.

This complex substantive and systemic inter-relationship comprises theory and practice of the law—both are subject of study at various levels. Law schools offer one of them; the study of legal semiotics in legal education offers another. This book

provides a guideline to enhance semiotic sensitivity, which is neither the one nor the other. “We have no power of thinking without signs”, the US philosopher Charles Sanders Peirce once noticed. Our guideline follows him in this regard and enhances semiotic sensitivity to criticize and to level our reflections.

Fragments of the book have been tested and used during the last 5 years in various Course Books written for students of the “Roberta Kevelson Seminar on Law and Semiotics” at the Pennsylvania State University’s Law School. Initial experiences and student papers have been published in an earlier volume on that subject.¹ This book provides sufficient materials for other ‘Law & Semiotics’ courses in relevant institutions.

The focus of this book is perhaps unexpected or even surprising. The issue is not how lawyers learn semiotics or are taught to apply semiotic subtleties in their legal practices. They already know the basics of what could be called semiotics and apply them within the strictly determined boundaries of their legal discourse. Molière’s Mr. Jourdain was not aware that he ‘spoke prose’, lawyers as well as law students are not aware how studying law equals to learn speaking semiotics. There is consequently less need for lawyers to acquire additional knowledge called ‘semiotic’ as there is a strong need to enhance and intensify awareness of the semiotic dimensions in legal handiwork. So listening to and reflecting upon what the Godfathers of semiotics offer could assist lawyers and law students to focus on what their self-understanding and practice requires. Such an exercise in self-understanding adds a level of rigor to the work of making meaning within the law-world in accordance with its logic, and the lawyer’s role as interpretant, symbol, and sign. Lawyers sensitive to the semiotic foundations of their work come to see and understand what they are told to do *differently*—a difference that will ultimately determine the face of law in modern society.

As may be fitting for a book touching on semiotics and law, this study is organized in four parts. The chapters are tightly integrated into a whole, but each might be read independently; the same is true of their parts and paragraphs. Each stands alone yet also closely intertwined with the others. Part I, entitled “Face-to-face with Legal Semiotics” (itself a semiotic play on meanings better understood after reading Chaps. 5 and 12) serves as a foundation. Chapter 1 introduces the reader to the idea of semiotics in general and legal semiotics in particular. It also introduces the major actors and shapers of the field. Chapter 2 then delves into the heart of the matter—signs.

Part II, entitled “Godfathers of Semiotics”, then introduces to the development of the strains of thinking that together now define semiotics. Chapter 3 focuses on the Americans, Charles Sanders Peirce, Roberta Kevelson, including the pragmatics of legal semiotics. Chapters 4 and 5 then consider de Saussure, Greimas, and European approaches to the ordering of meaning. The important concept of layering and boundaries, through the semiotic square, is also considered. Lastly, Chap. 6 looks to

¹ Jan M. Broekman & Francis J. Mootz III (Eds): *The Semiotics of Law in Legal Education*, Springer 2011. See also: Jan M. Broekman & Anne Wagner (Eds): *Prospects of Legal Semiotics*, Springer 2010.

the psychology of semiotics through the thought of Lacan. Language, the principal currency of the lawyer comes into its own here as well the idea of the delirium of the self is the particular object of this chapter. Chapter 7 amalgamates our semiotic Godfathers through the medium of language.

Part III, entitled “Jurisprudence and Legal Semiotics”, then turns to the business of legal semiotics. Chapters 8 and 9 look into the connection between legal theory and semiotics. It starts with a discussion of the origins of legal semiotics. It then considers semiotics theory and the practice of law. It ends with Chap. 10 considering the relationship between legal semiotics and the critical legal studies movement in the United States. Chapter 11 then looks into the application of these insights, considering first the self, and the state in the organization of meaning, and then in Chap. 12 turning to the semiotics of politics between persons and things. The object of the latter is to consider the evolution of semiotic worlds of law beyond the state. It considers the law and semiotics of this new world of meaning. Its central focus is on the construction of legal meaning around the object–symbol embodied in the corporation. Chapter 13 then turns to structuralism. The possibility of multiple structures for framing meaning, existing together and apart (the state and the corporation within globalization) provides the opening for a reconsideration of structuralism as a foundation of law systems and the production of meaning.

Part IV, entitled “Doing and Saying Legal Semiotics,” then ties together strands of legal semiotics. Chapters 14, 15 and 16 focuses on the specifics of “doing” and “saying” in legal semiotics. That requires a close look at the semiosis of the lawyer’s toolkit—text, names, and meaning relationships. The Socratic discussion of Cratylus is central to this discussion. Lastly, Chap. 17 touches on the unpredictable in meaning. The focus is on Fortuna/Tyche and its role in legal discourse and the production of meaning and structure in law, and brings us back full circle to the essence of the semiotic project in law. Chapter 18 then concludes the study, providing a vocabulary of semiotic terms and a bibliography.

Together, the materials in this book provide a structure for understanding and exploring the semiotic character of law and law systems. Cultivating a deep understanding for the ways in which lawyers make meaning—the way in which they help make the world and are made, in turn by the world they create, can provide a basis for consciously engaging in the work of the law and in the production of meaning.

But beyond that, the object of semiotics in law is to provide a space to understand the larger frameworks within which lawyers operate on meaning. That task goes to utility and efficiency. A useful lawyer is one that is conscious of his/her role, and of the limits of that role. But the efficient lawyer is also the one conscious of the ways in which that role must be necessarily subverted through the application of forms of meaning that are at once a sign of fidelity to the structures of the legal system within which she operates and at the same time an effort to remake it. The lawyer, who questions, seeks to extend or to narrow precedent, the lawyer who works with administrative agencies on the interpretation of regulations, or who works on the making of statutory texts—these are all examples of the lawyer as a semiotician.



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Lawyers Making Meaning

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