The Possibility of Universal Semiotics of Law

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Abstract. The universality of human language above the diversity of vernaculars as theorized by Noam Chomsky creates the temptation to adapt the same idea to law. There are parallels between language and law, e.g., Latin language and Roman law, the universality, formality, and generativity of the two and the embeddedness of law in language. Chomsky's universal generative grammar is applicable to law in a direct way but the theory is still extendable to semantics and pragmatics of law. The claim is that generating constructions of elemental constituents is an approved technique of law and jurisprudence as much as of linguistics. The pragmatic dimension of semiotics of law shows the significant contribution of law to consolidating social role of speech acts.

Keywords: Chomsky, universality, generativity, formality, language, law, translation, transformation, nature

The aim of this paper is to extend and apply some of Chomsky's concepts for languages of law as technical languages. The claim, which is to be justified, is that features presented as characteristic to ordinary language grammar by Chomsky, are even more characteristic to not just the grammar (syntax) but semantics and pragmatics of legal languages. This is only an initial hypothesis and will be elaborated in details in the future.

1. AN OUTLINE OF CHOMSKY'S CONCEPT-SYSTEM

1.1. Universality

Chomsky's groundbreaking work, *Syntactic Structures*,¹ propagates a structuralist (neo-Saussurean) program. In his understanding, a linguistic theory (the basis for general linguistics) must be developed on 'linguistic level', i.e. at the level of grammar. A grammar – either particular or general – is expected to unfold descriptive rules of phonemics, morphology, phrase structure, and syntax, by the rules of which sentences are constructed in languages. It is the grammar that generates 'grammatical sentences' (grammatically correct sentences in that language). Being structuralist, this theory has nothing to do with semantic, exactly as Saussure's theory states the structure is a syntactic structure. Universality has deep roots in human nature which is a sort of linguistic nativism in Chomsky's conception. His 'innateness hypothesis' as named by Hilary Putnam, claims that linguistic ability is genetically endowed in human beings in the form of some 'language acquisition device' (LAD). Accepting this presupposition is the only way to explain children's speed and precision in language acquisition, as opposed to the adults' acquisition of their second language; the constructional similarity of the set of rules organizing human languages and the uniformity of linguistic behaviour of humans. The innateness hypothesis is the source of the idea of universal grammar, as innate constrains work as patterns of grammatical constructions, i.e. rules genetically wired into human brains. From human viewpoint, universal grammar is the source of linguistic competence, the inner model of the grammar of language (the specific use of which is the performance). At the same time the work of universal grammar leads to Chomsky's concept of generative grammar.

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¹ Chomsky (2002).

1.2. Generativity

‘From now on I will consider a *language* to be a set (finite or infinite) of sentences, each finite in length and constructed out of a finite set of elements.’²

This is the first sentence of the chapter titled *The Independence of Grammar*, that follows his Introduction to *Syntactic Structures*. The point is the ‘finite set of elements’ – which are also the *final* elements i.e. the *letters* of a language. Using these elements, the system of grammatical rules generates well formed i.e. grammatical, sentences of a language. Chomsky’s generative view is developed in three steps:

1. ‘Elementary linguistic theory’ when a finite number of rules (imagined as ‘machines’) is able to produce infinite sentences from basic constituents of a language: meaningful words (or morphemes) construed of non-meaningful letters (or phonemes). Words may be classified with the help of word-classes: *N* (‘noun’), *V* (‘verb’), *A* (‘adjective’), *Adv* (‘adverb’), *Det* (‘determiner’), *Aux* (‘auxiliary verb’). It is trivial that a simple sentence is composed of a noun (*N* – functionally: subject) and a verb (*V* – functionally: predicate) = *N + V* e.g., Peter works.

2. Sentence structure is improved by introducing *phrases* (*P*). They are elaborated with the help of constituent analysis (parsing) as extensions of basic *N + V* structure into *NP + VP* form.³

3. The introduction of the concept of transformation results in the elaboration of transformational generative grammar. Transformations mediate between two levels of language structure: deep structure and surface structure. The content of a sentence may be expressed by using different phrase structures e.g. ‘this book is mine’ is equivalent with ‘this is my book’ or ‘he read the book’ with ‘the book was read by him’. Rules of transformations ensure that the deep structure, the logical form of the semantic content of a sentence be properly expressed by sentences with a different surface structure. The concept of deep structure offers a link to universality of languages. It is the deep structure (time, tense, mode, genitive, plural, accusative, etc.) which is common, making possible the transformation, the translation, between surface structures.⁴ During transformations of

² Chomsky (2002) 13. (Emphasis in original)

³ Chomsky’s example is ‘The man hit the ball’ (where *T* = definite article ‘the’):

- (i) *NP + VP*
- (ii) *T + N + VP*
- (iii) *T + N + V + NP*
- (iv) *the + N + V + NP*
- (v) *the + man + V + NP*
- (vi) *the + man + hit + NP*
- (ii) *the + man + hit + T + N*
- (iv) *the + man + hit + the + N*
- (v) *the + man + hit + the + ball*

The same can be (and usually is) represented with tree-diagram, as well; see Chomsky (2002) 27.

⁴ The translation relation between expressions in the language may be specified in two ways. First, as above, the relation may be defined with the help of deep structure; second, with introducing some modified ‘intermediate structure’ (surface structure with traces), which, using rules of interpretation, leads to the ‘logical form’ of the expression. In any case, translation rules have a common form: ‘Given a structure of such and such a form, translate the structure into an expression in the interpreted language of such and such a form.’ See Bach (1976) 183.

sentences, the meaning has to or ought to remain the same, so Chomsky's relation to semantics is easy to realize. Meaning is after reality and before conveyance; grammar begins only with conveyance. Semantics has no room in a theory like Chomsky's grammar. In this respect meaning may be equated with deep structure. Both are unmoving bases for a changing surface.⁵

1.3. Formality

Saussure made it evident that being structuralist means being formalist. Chomsky's theory is mostly traced back to the representatives of American descriptive linguistics. The most important figure was Leonard Bloomfield (1887–1949). His student was Zellig Sabbatai Harris (1909–1992) and Chomsky is known as a follower. Harris is praised as the pioneer of mathematical and computational linguistics. This background explains Chomsky's aspiration to apply mathematical theory of formal languages for modelling structures of natural languages. Searle celebrated Chomsky for quitting with positivism, structuralism, and behaviourism of his forefathers but in the same breath celebrated him for his understanding of mission of linguistics:

'The description of a natural language would be a formal deductive theory which would contain a set of grammatical rules that could generate the infinite set of sentences of the language, would not generate anything that was not a sentence, and would provide a description of the grammatical structure of each sentence.'⁶

This exactly is a 'generative grammar' and 'formal'. Chomsky's students and followers, Searle calls them 'Young Turk', criticized him for neglecting semantics, which is inseparable from syntax. Accepting this demand, Chomsky extended his grammar to both phonologic and semantic structures as dependent on syntactic structure. In his *Language and Mind*, he admitted that sound and meaning belong to the sentence⁷ but it is the grammatical sentence that connects sound and meaning i.e. generates sound–meaning pairings. If they together form an entity then universal grammar needs universal phonetics and universal semantics. They are not any specific human language and have to be formal. In fact, they are one unit: deep structure defines semantic information; surface structure defines phonetic information and are connected by syntactic structure.⁸

2. APPLICATION OF CHOMSKY'S CONCEPT-SYSTEM TO THE LANGUAGE OF LAW

'[...]It may be (as, in fact, was traditionally assumed) that base structures can vary only very slightly from language to language; and, by sufficiently restricting the possible range of base structures, it may be possible to arrive at quite general definitions for the categories that function as »nonterminal symbols« in the rules of the categorial component. [...]his

⁵ Now we set aside the critiques and alternatives to Chomsky's theory – simply because we try to make use of that theory. As we are to sketch a theory in law, not in linguistics, we believe that even if Chomsky's universal generative grammar loses its authority, our claims may be maintained.

⁶ Searle (1972) 18.

⁷ 'The grammar of a language, as a model for idealized competence, establishes a certain relation between sound and meaning – between phonetic and semantic representations.' Chomsky (2005) 103.

⁸ See Chomsky (2005) 111.

would provide language-independent definitions of grammatical relations, and would raise the possibility that there exist deep-seated universal principles of semantic interpretation.’⁹

Our claim is that it is easier to see fulfilled this expectation of Chomsky in the realm of law and perhaps likewise in the realm of technical languages.

The question is vital as political integration is taking place, or not, within Europe, involving or presupposing legal integration and linguistic integration, at least integration of national languages of law. Integration of national languages of law means at least their translatability into each other. This process is partly similar, partly dissimilar to that going on in the United States of America. The case of the ‘United States of Europe’ is similar regarding the challenge of political and economic integration in the form of federalization but is different regarding the historical fact that Europe has no chance to become the ‘melting pot’ of different nations, cultures, religions – and languages. In any case, the system and operation of the institutions of EU require and necessitate daily translation of a vast amount of legal texts among 24 official languages. The challenge is not unknown for the USA either; think about the Spanish speaking community or the problem of ‘Ebonics’ language use.¹⁰ The question is whether this demand can be fulfilled at an acceptable level. How many languages is ‘the mouth that pronounces the words of the law’¹¹ able to speak? Is it speaking one or several, parallel languages? In search of answer to that question we use concepts introduced by Chomsky as reference.

2.1. Translation as transformation

The challenge posed by multilingual political communities or integration appears only at surface level, and may be handled by technical tools of professional interpretation, like in the EU. The core of the problem, however, lies at deeper level, at the roots of implementation of law. The process of implementation can be best modeled as translation. Translation is any transformation of a message expressed in one code into the same message expressed in another code. Translation is change of codes.¹² With two basic questions to be answered at the end of any legal procedure that of facts and that of law, two lines of translations, must be spun into the texture of the case.

The first string is the line of facts. Facts of the past may not be ascertained directly, as perception, in the present they can only be concluded or inferred. The premises of conclusion cannot be anything else but narratives of past events. Storytelling by witnesses, experts, different persons of the case serves as a complex and antinomic starting point to finding, or rather reconstructing the facts of the case. The job is similar to that of a detective to find out who tells a lie and who tells the truth or a historian to single out facts, certified by definite sources and definite methods. At second glance the task is more: the facts must be expressed – translated – by the language of the laws. The facts of the case must be transferred to the (limited and artificial) territory of law and translated into the technical language of law. Within the world (the ‘empire’) of law not just anything can happen and not anything can be recognized as fact. A limited and defined series of states of affairs, a closed though large number of legal constructions (like theft, murder, trust, contract,

⁹ Chomsky (2005) 139–40.

¹⁰ To it see e.g. Lakoff (2000).

¹¹ ‘[T]he national judges are no more than the mouth that pronounces the words of the law, mere passive beings, incapable of moderating either its force or rigour.’ Montesquieu (2001) 180.

¹² For details see Szabó (2004).

marriage, loan, etc., etc.) serves as the set of narratives to be fitted by bearings of cases. Identifying narratives of laws and narratives of cases goes by translation in large sense: translation of statements of facts of cases into statements of facts of laws. Translation of stories told by laypersons of the case into narratives expressed by professionals of law, using their own terminology.

The second string is the line of law. The problem, raised by ascertaining the (rule of) law to be implemented to the facts of the case is different from fact-finding. Facts, as events of the case, are rooted in the empirical reality, though in a past version of it. Temporal segments of reality can be handled by possible world logic: each temporal stance of reality forms possible worlds w_1 , w_2 , ... w_n , whose ascertaining raises only difficulties of proof. The problem of law-finding is slightly different, as norms of law are not empirical entities. They are mental entities; conceptions of possible worlds (where people do not kill, do not steal, etc.) to be transformed into reality. The first act of translation is the transformation of that mental conception into linguistic expression. The main difference between civil law and common law systems is that the former gives the linguistic expression a canonic form, while precedents of the latter do not. Texts of norms of law are designed to express and convey the will of legislators. Textual expression of will is general and abstract, while cases are particular and concrete. During implementation the simplest way of referring to a norm is to create a 'sentence token', a verbal replica of the original text by repeating it word by word. The only way to transform this text without translation is re-forming of the words of the norm in indirect (reported) speech. Every other transformation is translation: concretization of the norm by re-wording.

Translation is transformation of one linguistic expression into another – in the sense of *code-switching*. Roman Jakobson distinguished three types of translation:¹³

a) *Interlingual translation* is translation *sensu stricto*: interpretation of linguistic signs with the help of another language, e.g. translation from English into German.

b) *Intersemiotic translation* or transformation is translation *sensu largo*: interpretation of linguistic signs with the help of a non-linguistic system of signs, e.g. translation of traffic rules into traffic signs.

c) *Intralingual translation* or re-wording is translation *sensu specifico*: interpretation of linguistic signs with the help of the same language, e.g. translation expression(s) or text(s) of lay English into legal English.

We are interested in translation *sensu stricto* and *sensu specifico*. They are common in nature. In order to justify the (practical) correctness of translation both need some common denominator for ensuring the equivalence of (legal) terms between different languages (interlingual translation) or within the same language (intralingual translation).

2.2. The difficulty with a translation

The striking feeling when looking at the infiniteness of language, the infiniteness of possible linguistic expressions, sentences, is that the borders of 'language's empire' are open. The consequence is that, having a linguistic nature, the borders of 'law's empire' are also open.

¹³ Jakobson (1959).

This experience is expressed by the concept of ‘open texture’¹⁴ and by claiming the ‘interpretive nature’ of law.¹⁵ Both conceptions face the challenge that within the legal universe, an infinite number of utterances on law are to be channeled into a finite number of constructions of law. An infinite number of claims about different ways of taking someone else’s life is waiting for classification as manslaughter or some other (though strictly limited) form of harm. In terms of law this challenge is covered by the concept of interpretation. In terms of language it is covered by the concept of translation. In both cases the question to be answered is if the claim ‘A hit B in the face, in consequence of which B fell back and died because of suffering a fracture to the base of the skull’ can be transformed into the claim ‘A killed B’.

In the case either of interlingual or of intralingual translation the feeling of infiniteness and the feeling being lost appear at the surface level. Perceiving the variety of possible linguistic formulations of a norm, Searle uses the following sentence as an example of syntactic openness:

The shooting of the hunters is terrible.

This can mean that it is terrible that the hunters are being shot or that the hunters are terrible at shooting or that the hunters are being shot in a terrible fashion. He says that ‘In spite of the fact that it contains no ambiguous words (or morphemes) and has a very simple superficial grammatical structure of noun-verb-possessive pronoun-noun, this sentence is in fact remarkably ambiguous.’¹⁶ The problem of ‘syntactically ambiguous’ sentences within law is rare as the syntactic structure of sentences is mostly clear.¹⁷ The paradigmatic case of ambiguity in law is semantic indeterminacy when the meaning of an expression is uncertain.¹⁸ This is the job of semantic interpretation. The handling is similar but the core of the problem is different e.g. the meaning of ‘dog’ may be completely clear, even though it can be doubtful if a ‘goat’ or a ‘cow’ is a ‘dog’ when interpreting the sign ‘No dogs in restaurant’. Normative sentences like this are practically or pragmatically ambiguous. Just as this example is clear syntactically, it is also clear semantically, as the word ‘dog’ can be unambiguously determined. The deep structure of the prohibition is ‘Dogs are unwanted in restaurant’. Using the recursive property of ‘dog’ it is possible to change it with words (like ‘goat’ or ‘cow’) without hurting the point of the sentence. The requirement of the change of terms is practical or institutional equivalence, i.e. that the practical (= legal) reason and consequence remain the same.¹⁹

¹⁴ Hart (1961) 120–32.

¹⁵ Dworkin (1977) Ch. 2; (1986) Ch. 2; (2011) 401–2.

¹⁶ Searle (1972) 17.

¹⁷ The problem of syntactic ambiguity is handled by Leibniz as perplexity: the *casus perplexus*. By using the metaphor of ‘knot’ (like Alexander the Great’s) he refers to a ‘circular doubt’ which stems from text of law whose contradicting alternatives of understanding are equally well-founded. Leibniz (2013) p. 75. The most famous example of the kind comes from Christopher Marlowe in his *Henry II*: ‘*Eduardum occidere nolite timere bonum est*’ – which can be read, depending on the place of the comma: ‘Do not be afraid to kill Edward, it is good’ or ‘Do not kill Edward, it is good to fear’.

¹⁸ Harts example: ‘No vehicles in the park’ exemplifies the problems around the meaning of ‘vehicle’: what about bicycles, roller skates, toy automobiles, airplanes? Hart (1961) p. 123.

¹⁹ Szabó (2005); see also later.

2.3. The problem of nature

Innatism, which originated in Descartes' and Leibniz's²⁰ thoughts, means that humans have inborn (mental) capacities. It also presupposes an operative concept of nature. For linguistics (and the same way for semiotics) nature represents the reference of an utterance and offers truth-condition. In his later works Chomsky made steps towards integrating aspects of semantics into his syntactical theory, as critiques (even from among his students) have been launched blaming him for neglecting problems of semantics. While syntactical theories offer explanations for sign–sign relation – the way in which elements of grammatical constructions are connected to each other – semantic theories are expected to offer answers to questions of sign–reality relation, i.e. the way in which elements of grammatical constructions are connected to elements of reality. The basic model to explain sign–reality relation is the 'semantic triangle' of Gottlob Frege.²¹ The triangle has three angles. At the peak we find the sign (a symbol, substituting reality) and at the bottom two anchors connecting the sign to reality. One is sense or meaning the mental content called up by the sign; the other is reference or denotation the piece of reality which is pointed at and picked out by the sign. Though not each and every sign (word) has reference in reality e.g., 'centaur' or 'nymph', those words which do, have some objective (not just conventional) basis in reality, common to all speakers. In this way reference may fix meaning, as well, by connecting mental contents to pieces of the real world. As one of possible nominees for the role of 'deep structure', as 'semantic deep structure', another concept is at hand: that of 'natural kinds' (Quine, Kripke, Putnam), where the basis of conceptualization and universalization is *nature*.²²

'Cut the pie any way you like, »meanings« just ain't in the head!' warns Putnam.²³ The (logical) extension or (linguistic) reference of 'elm' or 'beech' is the same for everyone, even if someone cannot tell an elm from a beech tree. The meaning is not just in our heads, it is rooted somewhere out there, in reality. Natural kinds provide the basis of universality by referring to nature. The 'tiger-thing' or 'water-thing' or 'Sun-thing' is the same for everyone and is able to form the basis for a common understanding. It is not necessary that each speaker is able to define 'water' as H₂O or to tell the difference between water and some similar looking liquid but it is necessary that some experts within the speech community be able to do that. This is the reason for introducing the hypothesis of the universality of the division of linguistic labor: 'Every linguistic community exemplifies the sort of division of linguistic labor [...]; that is, it possesses at least some terms whose associated »criteria« are known only to a subset of the speakers who acquire the terms,

²⁰ '[...]Ideas and truths are for us innate, as inclinations, dispositions, habits, or natural potentialities, and not as actions, although these potentialities are always accompanied by some actions, often insensible, which correspond to them.' Leibniz (1949) 46.

²¹ Frege (1980).

²² It is tempting to trace back the conception of natural kinds to Plato, as Socrates says in his *Phaedrus*: '[There are] two kinds of things the nature of which it would be quite wonderful to grasp by means of a systematic art. [...]The first consists in seeing together things that are scattered about everywhere and collecting them into one kind, [...]the other] is to be able to cut up each kind according to its species along its natural joints.' (265d-e.) Magnus connects the 'taxonomy question' to the first, while 'ontology question' to the second kind. As an overview of perspectives of natural kinds-problem see Magnus (2015).

²³ Putnam (1973) 704.

and whose use by the other speakers depends upon a structured cooperation between them and the speakers in the relevant subsets.²⁴ Natural kind concepts connect possible worlds, by establishing ‘cross-world relations’.²⁵ Just as Peter has the same height as Tom, even if Peter’s height is defined in feet while Tom’s height is defined in centimeters, ‘water’ is the same material (H₂O) in possible worlds W1 and W2. Using the previous example, a dog is a dog anywhere.

The bridge between different possible worlds is built by natural kind concepts which provide for objective grounding of sameness. ‘Sameness’ can be defined with a term from logic ‘*aequivalentia*’ – a compound word, put together from Latin ‘*aequus*’ (equal, same) and ‘*valentia*’ (force). It is a relational concept that states that two (or more) things, acts, or utterances have equal force or value and, therefore, are interchangeable, they can substitute each other. In logic, equivalence means equal truth-values and interchangeability of logical schemes or formulae. Considering that logical equivalence is often called ‘logical synonym’, it can be extended to equivalence of linguistic expressions. This is the cornerstone of translation to ensure that the target text is equivalent with the source text. This is impossible in a strict logical sense. The question then is what should be possible. One answer is grammatical and semantic deep structure of utterances. Another answer is the role of natural kinds as common ground for natural kind words. A lot of other answers can be found in translation theory, such as textual equivalence, formal equivalence, dynamic equivalence, or total, optional, approximate, zero, communicative, functional, referential, contextual etc. equivalence,²⁶ or practical equivalence.²⁷

Law is not a ‘natural kind’; it is not constituent of empirical nature, so it does not have an objectively given existence, a solid, common ground for participants of legal praxis. This feature of the legal phenomenon is expressed, among others, by Alf Ross.²⁸ He introduced the concept of (semantically) ‘empty words’ – for words without reference (without *denotatum*). Concepts (words) of law are of this kind: they have no reference in empirical reality, just meaning within language. That is why ‘ownership’ or ‘contract’ could be equally properly referred to by words like ‘cheese’ or ‘tû-tû’. If legal concepts are not anchored in reality, then anything goes, there is no objective limit of naming – and there is no objective ground for equivalence of the meaning of such words. This ground is to be found somewhere else, and not in nature.

However, ‘nature’ cannot be perceived as purely *empirical* because nature bears the mark of human interference, to an exponentially progressive extent. On the other hand, the concept of ‘nature’ (in and of itself) is merely a philosophical product – ‘the first philosopher was the human who discovered nature’.²⁹ The ideas of ‘natural’ and ‘human’ are not completely contradictory to each other; they represent two poles in a system where each both defines and is defined by the other. The world is characterized by duality, as declared in an often quoted sentence of Kant

²⁴ Putnam (1973) 706.

²⁵ Putnam (1973) 708.

²⁶ See e.g. Klaudy (2003) 80–92.

²⁷ See Szabó (2005). When searching for some *tertium comparationis* Ernst Rabel introduced the distinction between basic consideration (*Grundgedanke*) and formal element (*formales Rechstelement*) of law as the basis for functional equivalence between systems of law.

²⁸ Ross (1957).

²⁹ Strauss (1953) 131.

Two things fill the mind with ever new and increasing admiration and awe, the more often and steadily reflection is occupied with them: *the starry heaven above me and the moral law within me*.³⁰

In accordance with this line of thinking, the world really consists of two worlds: a *natural* and a *moral* world. These two worlds were called by Blaise Pascal the ‘first’ and the ‘second nature’. Man, as natural being, lives in a nature, partly created by himself, by convention. ‘Custom is a second nature which destroys the former.’³¹ The rule over nature is complete ‘There is nothing he may not make natural; there is nothing natural he may not lose.’³² If so, then ‘natural kinds’ can be understood as ‘kinds of second nature’, as well. Perhaps, constituents of second nature (social facts, social institutions, social constructions) may provide for the same common, solid ground for connecting meanings, similarly to the kinds of ‘first nature’. In order to accept this claim, we have to share a methodological presupposition: ‘The first and most basic rule is *to consider social facts as things*.’³³ ‘Things’ here may be identified with ‘natural kinds’.³⁴

2.4. Law in second nature

The first sentence of Chomsky’s explication in his *Syntactic Structures* have been already cited and these are followed by

From now on I will consider a *language* to be a set (finite or infinite) of sentences, each finite in length and constructed out of a finite set of elements. All natural languages in their oral or written form are languages in this sense, since each natural language has a finite number of phonemes (or letters in its alphabet) and each sentence is representable as a finite sequence of these phonemes (or letters), though there are infinitely many sentences. Similarly, the set of »sentences« of some formalized system of mathematics can be considered a language.³⁵

He presents that ‘writing’³⁶ with these elements means constructing phrase structures and sentence structures.

The project, realized by the end of 19th century by Frege, Russell, and many others by integrating mathematics, logics, linguistics, philosophy into one semiotics was initiated and

³⁰ Kant (1954) 171. (Emphasis in original)

³¹ Pascal (1958) § 93.

³² Pascal (1958) § 94.

³³ Durkheim (1982) 60.

³⁴ The problem is addressed and much debated in social sciences as the question of ‘social kinds’. Hacking’s approach is quite widespread: human kinds differ from natural kinds, as they have specific ‘looping effects’: When they come into existence they go through social scientists’ classifications, quantification, and intervention through which human kinds change the objects classified. See Hacking (1995). See also Bird & Tobin (2018) Ch. 2.4. Apart from the fact that natural sciences suffer from similar defects, as well (like e.g. Heisenberg’s uncertainty principle), one should keep apart ontological level from epistemological level, i.e. the objectivity of the object from the objectivity of cognition.

³⁵ Chomsky (2002) 13.

³⁶ Chomsky (2002) 26. ff.

partly elaborated by a 17th century lawyer Gottfried Wilhelm Leibniz (1646–1716). He says in *De arte combinatoria* (1666, aged 20 years)

[A]s jurisprudence is similar to geometry in other things, it is also similar in that both have elements and both have cases. The elements are simples; in geometry figures, a triangle, circle, etc; in jurisprudence an action, a promise, a sale, etc. Cases are complexions of these, which are infinitely variable in either field. Euclid composed the *Elements of Geometry*, the elements of law are contained in the *Corpus Juris*, but in both works more complicated cases are added. The simple terms in the law, however, out of the combinations of which the rest arise, and as it were, the *loci communes* and highest genera, have been collected by Bernhard Levinthetia, a Franciscan monk, in his commentary on the *Ars magna* of Lully (which see). To us it seems thus: the terms from whose complexions there arises the diversity of cases in the law are persons, things, acts, and rights...³⁷

The last words of the quotation point back in the past, at the vogue figure of Gaius. Chomsky's claim was that an elementary structure of a linguistic utterance is a sentence (*S*), which consists of a noun (*N*) and a verb (*V*): $S = N + V$. He developed this structure into phrase-structures: noun-phrase (*NP*) and verb-phrase (*VP*); this way $S = NP + VP$. In terms of grammar this structure is subject + predicate; in terms of logic a proposition (*p*) consists of a subject-term (*a*) and a predicate-term (*F*): $p \Leftrightarrow aF$. The universe of both grammar and logic is language or, rather, language-use.³⁸ Now we arrive at a sub-universe – the law. Law as institutional system is the sub-system of society and as such, in order to be able to attend to its function, it has a relative autonomy within society. Law owes a limited and artificial domain within society,³⁹ or juridical field as named by Pierre Bourdieu.⁴⁰ The legal universe has an own language, with a closed lexicon and a specific taxonomy. Everything is expressed in this language within law and anyone enters the field has to have competence in it.

Turning to the division of this field, Gaius lays the basic structure down: 'The whole of the law by which we are governed relates either to persons, or to things, or to actions.'⁴¹ By switching to Chomsky it can be shown that a 'person' is a noun so is 'thing', while 'action' as a manifestation of an 'act' is a verb. They can be labeled as *PN*, *TN*, and *AV* respectively and these can be extended into phrases: *PNP*, *TNP*, and *AVP*. $P - T - A$ would do also well. Though it is possible that no one else is involved in individual action e.g. when I break a piece of stone, this case would remain out of juridical field. The act shall enter juridical field as far as someone else is concerned; e.g. I break someone else's stone or I do that for him or her etc. That is why 'person' within law is not monadic but dyadic category, as 'action' has an active and a passive side. So if we wish to reconstruct the elementary building block of law, we get a figure, something like this (where *P1* and *P2* are interrelated persons, *T1* and *T2* are things involved, the arrows represent forms of actions):

³⁷ Leibniz (1989) 82.

³⁸ Boëthius: *Omnis ars logica de oratione est*: The whole of the art of logic is about parlance.

³⁹ See e.g. Postema (1996).

⁴⁰ Bourdieu (1987) 816. ff.

⁴¹ Gaius (1904) II. 8. Gaius' understanding of *actio* as legal claim was widened as any action within law by Connanus in the 16th century.

The taxonomy of the language of the legal universe defines the (legally possible) kinds of persons, of things, and of actions. These are pre-arranged by Gaius, further detailed by lawyers of past centuries, such as Leibniz, and worked on in our days. Defined elemental categories serve for constructing pre-fixed patterns of relations, which are institutions of law. Leibniz found the rules and technique of generating complexities from simplicities (elements) in his *ars calculatoria*, not for use of mathematics but for use of law. The language of law has transformational rules, too, (like rules of interpretation) in order to be applicable to individual cases.

J. C. Smith calls such legal institutions ‘legal constructions’.⁴² Though he does not explicitly refer to Rudolf von Jhering’s *The Spirit of Roman Law*, the concept of ‘*juristische Construction*’ was elaborated by Jhering.⁴³ Smith claims that the institutions constructed (partly) by law – the ‘constructions of law’ – are similar to constructions such as the formulae of mathematics or geometry. The institutions of law are constructed of a limited number of ‘building bricks’. These elements expressed by variables just like πr^2 or $a^2 + b^2 = c^2$. Similarly, within law, the basic construction of ‘purchase’, for instance, consists of two persons, a vendor/seller Ps + a vendee/purchaser Pp + a physical thing (the property transferred) Tp + a money-thing (purchase-price) Tm connected by the pattern of a definite scheme. Ordering the same variables into different schemes produces borrow, exchange (barter), theft, etc. The series of constructions result in the taxonomy of concepts of law, which was initiated in Gaius’ *Institutions*, by ordering all the concepts (constructions) of law under three main categories, elaborating taxonomy by division of these categories. The process of creating constructions of elementary constituents is also controlled by law’s own ‘generative grammar’ – which is known as dogmatics (or doctrine) of law: the way lawyers think, speak, and act.

Transformation as translation – both inter-and intra-lingual – is made possible by deep structure of language of law. Latin is the origin of each and every modern professional (technical) language of modern law. Different nations faced the challenge of developing their own legal language at different points of their history. However, the appearance of their challenge was connected to the appearance of nation-states, of national systems (codes) of law, and of national literary languages. This was not much earlier than some three centuries ago, compared to the 20–25 centuries of history of Roman law. It is not surprising that the common roots of institutions of law, together with common roots of Latin terminology, may aspire to being a common plinth to modern systems and languages of law – even if the Latin form had been changed into the expression of some modern language. Even if so, the conceptional content, the structure, the construction of the idea have more or less remained the same.

⁴² Smith (1968).

⁴³ Jhering’s ‘*juristische Technik*’ is similar partly to Chomsky’s – when starting his analysis from ‘*Rechtsalphabet*’: Jhering (1858) 359–79. –, partly to Leibniz’s reasoning from simplicities to complexities – when forwarding through ‘*logische Concentration*’ (379–84) to ‘*juristische Construction*’ (384–414.).

Law has linguistic nature – there is nothing empirical or physical within law. Linguistic constructions are not just names with meaning, but, in contrast with Ross' claim, have referents in real world. This world belongs to the second nature but it is real. The reality of second nature lays in *institutional facts*, if empirical ('hard') facts cannot provide for it. 'Institution' in general is understood according to Talcott Parsons. He explains the concept of institution and institutionalization in terms of social integration via fixation of patterns of complementary role-expectations within a community:

The word institutionalization means both the internalization of common values by the members of a collectivity, and also the enunciation of prescriptive or prohibitory role expectations by occupants of responsible roles.⁴⁴

The concept of institution is well applicable to prescriptions of law, as norms of law are created to fix patterns of mutual expectations among participants of certain social relationships. These patterns are sometimes called even legal institutions; such as theft, murder, marriage, trust, citizenship, contracts, etc. The institutional hardware of law is provided by constructions of Roman law – not just for civil law, but for also common law systems. These constructions may serve as constituents of the 'second nature' or 'deep structure' of law.

2.5. Law and pragmatics

Searle lacks the most the pragmatic dimension of Chomsky's theory:

Saying something and meaning it is essentially a matter of saying it with the intention to produce certain effects on the hearer. And these effects are determined by the rules that attach to the sentence that is uttered. Thus, for example, the speaker who knows the meaning of the sentence »The flower is red« knows that its utterance constitutes the making of a statement. But making a statement to the effect that the flower is red consists in performing an action with the intention of producing in the hearer the belief that the speaker is committed to the existence of a certain state of affairs, as determined by the semantic rules attaching to the sentence.⁴⁵

Besides syntax (sign–sign relation) and semantics (sign–reality relation), the third part of semiotics is pragmatics (sign–user relation). Signs are not for their own sake, nor are utterances. They are for something outside the realm of language. They are for their users' sake who want to reach something by them. They want to act with speaking words.

Semantic competence is in large part the ability to perform and understand what philosophers and linguists call speech acts. Now if we approach the study of semantic competence from the point of view of the ability to use sentences to perform speech acts, we discover that speech acts have two properties, the combination of which will get us out of the dilemma: they are governed by rules and they are intentional. The speaker who utters a sentence and means it literally utters it in accordance with certain

⁴⁴ Parsons (1982) 126.

⁴⁵ Searle (1972) 17–18.

semantic rules and with the intention of invoking those rules to render his utterance the performance of a certain speech act.⁴⁶

The essence of speech acts is effectively expressed in the title J. L. Austin's book: *How to do things with words*. It is clear that speech acts do not belong to nature *sensu stricto* i.e., the construction of speech acts is not genetically coded, instead, they belong to 'second nature'. The question then is *in what sense* does the possibility of speech acts pertain to human nature. The question is justified, as uttering certain words does *not* have any effect on physical world. This effect is only imaginable via the medium of human behavior. If we are to locate the capacity of speech acts then, we have to try it within the realm of above mentioned 'second nature'. Second nature is constructed by habit and convention. The second nature is artificial as it is created by man. The way of creation is convention – human consent in the (wishful) order of things. However, 'artificial' does not mean 'virtual'. The second nature is real from top to toe. Its reality means that speech acts (linguistic or symbolic manifestations) are connected to consequences with the tool of obligations taken by pieces of promise. This line of quasi causality was introduced, enforced and is institutionalized day after day by law. The contribution tries to grasp the ancient roots and basic steps of the process in the course of which operative speech acts were carved out (i.e. invented, established and institutionalized) by series of procedures of law.

3. EPILOGUE

Thomas Hobbes holds that 'So that the nature of Justice, consisteth in keeping of Covenants; but the Validity of Covenants begins not but with the Constitution of Civill Power, sufficient to compell men to keep them.'⁴⁷ Any society is able to operate if and only if 'covenants' (agreements, contracts) are kept if the ancient Roman principle remains valid: *pacta sunt servanda*. Force of speech acts and force of law are intertwined. From this point of view the role of law in keeping societies together becomes obvious: given words originate some sort of binding force: obligation (*obligatio*). The second nature secures the force of words (similar to the force of things in the first nature) with the medium of obligation. This is the condition on which words can be regarded as equivalent with acts.

There are two possible ways for obligations to come into being: *undertaking* an obligation (i.e. obliging ourselves by our own words) and *imposing* an obligation (i.e. obliging someone else by our own words). The obvious example of the former is *promise* while that of the latter is *command*. Both ways of doing things by words are achievements of *civilization* – their possibility had to be created artificially. At the beginnings of civilizations we see the process how the magic–ritual force of uttered words through some form of rigid formalism emerges into the condition where words earn the status of acts. The most effective catalyzer of this process is law.

After having arrived at linguistic aspects of law, one more applicant for the role of 'deep structure' is the set of 'narrative structures' or 'narrative constructions'. The presupposition to this claim is the conception that Law's Empire extends on the continent of Language, so constructions of law are, at the same time, linguistic constructions. If there

⁴⁶ Searle (1972) 18.

⁴⁷ Hobbes (1991) *Leviathan*.I. xv. 101.

are universal narratives (we suppose there are),⁴⁸ then they may determine the common ground for narratives of law. If we read early legal regulations (e.g. the Code of Hammurabi or the Laws of Manu or the Law of the Twelve Tables), we find mini-narratives, short stories which have happened and may happen again and again. Possible states of affairs, schemas of possible actions and relations ascertained by law originate in the same and common heritage, just like the narrative of King Oedipus, of Hercules, of Heracles and all the heroes of ancient narratives.

Finally this paper can only be concluded with an old story: both the institutions and the languages of law may be traced back to Roman law and to the Latin language as the origin of professional (technical) languages of modern law, forming solid grounds for their translatability, as well. The ‘mouth’ of Roman law speaks the same language, tells the same words to everyone.

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⁴⁸ For the technique of constructing narratives (in this case: Russian folktales) the same way as constructs of law see Propp (1968).

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