UNLIMITED SEMIOSIS, ENCYCLOPAEDIC SEMANTICS, AND INTERPRETATION OF RIGHTS

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Abstract: In this article, I intend to identify, within the frame of the semiotic theories of C.S. Peirce and U. Eco, some indications that may help to shed light on a remarkable phenomenon of constitutional interpretation, namely the influence exerted, in the process of determination of the constitutional provisions which attribute fundamental rights, by the set of beliefs, expectations, purposes etc., sedimented within a socially oriented linguistic practice. Through this operation of analogical transposition, I seek to highlight how the identification of the theoretical-doctrinal backgrounds related to the complex of ethical-political conceptions incorporated by the constitutions is strongly influenced by various elements of an intra- and extra-textual nature. Furthermore, by placing the interpretative processes in a broader hermeneutic-semiotic framework that considers legal cases as sign functions, the text seeks to demonstrate in a relatively easy-to-understand manner that the theoretical complications involved in the legal field do not ultimately differ from to those found in any other interpretative activity that involves the use of a natural-historical language.

Keywords: Constitutional Interpretation; Interpretation of Rights; Unlimited Semiosis; Encyclopaedic Semantics.

1. Introduction

The following discussion takes place within a determined conceptual and axiological background: in a legal-political and historical-temporal context characterised by a pronounced constitutionalization of legal culture. While being aware of facing an effort to rationalise a frame that is more articulated and complex in reality, it is considered that the conjunction of some distinctive features of the elaboration of constitutions-vagueness, normative indeterminacy, multiplicity, and conflicts between fundamental rights etc. – are still able to provide the ground for working on an *ideal-typical representation*[1] of the constitutional state as a unitary conceptual model featured by the presence of certain structural elements.

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[1] The reference is of course Weber (1949: 42-44, 90-107, 110, 114, 125).

Given these premises, the main objective of this analysis is to identify, within the semiotic theories of C.S Peirce and U. Eco, some indications that may contribute to shedding light on a remarkable phenomenon of constitutional interpretation, namely the influence exercised, especially in comparison with the constitutional text's substantive part (and even more particularly, of the basic values underlying the formulation of the constitutional provisions that recognise fundamental rights), by the set of beliefs, purposes, expectations, assessments of reasonability and propositional attitudes sedimented within a socially oriented linguistic practice. Some specific objectives are then linked to this general purpose, verifying to what extent these tools can be applied to the field of constitutional interpretation and what contributions they can actually make. As part of a global approach to semiotic processes, the surplus of the sign and its unbounded openness to further interpretation/reaction by other signs determines the experiential continuity between all sign circuits. An unreflective adoption of this kind of perspective seems to suggest a deep reinterpretation of the relations of translational continuity between the different languages we use on a daily basis. However, the use I propose of the two authors is limited to some specific theses – namely, unlimited semiosis and encyclopaedic semantics – aiming at of investigating their relevance for the theory of constitutional interpretation.

I do not intend to argue in favour of the existence of a relationship of integral identity between the considered theses, whose nature is essentially philosophical-linguistic and semiotic, and the theory of constitutional interpretation or interpretation of rights. Rather, I aim to verify the suitability of using certain propositions of semiotic theory to analyse the process of determining the content of the constitutional provisions that attribute fundamental rights – this is ultimately the heuristic hypothesis that supports the present analysis –.

On a methodological level, I employ an approach to interpretation and legal reasoning based on an expressivist, anti-representationalist conception of meaning. I also defend a *particularist and coherentist conception of practical reasoning*, according to which the justification of one or more beliefs can only be assessed within an overarching system of rational beliefs and assumptions. In parallel, I propose a *holistic vision of the constitutional text*, which is understood as a unit of meaning equipped with its own peculiar linguistic code. Finally, I use a multi-dimensional notion of *background context*, attributing particular importance to the premises of social, political, economic, historical, and cultural nature etc.

Given the legal-philosophical nature of this work, no predominant space is given to the analysis of positive legal data, whose consideration, on the contrary, assumes the function of contributing to integrating the study of constitutional language to the level of normative production. In this sense, I do not intend to propose an explanatory-interpretive reconstruction of a specific area of legal experience (the Brazilian context, for example), but rather a theoretical investigation essentially oriented to the reconstruction of the interpretative activity of judges, and only indirectly of jurists, in the face of normative provisions (the linguistic statements produced by acts of promulgation waiting to be interpreted) that recognise constitutional rights. By using theoretical tools from the philosophy of language field, I seek to translate some specific aspects of the legal reality

studied into a model or schematization, aiming at of making their comprehension more accessible. By proposing this type of operation, I will implicitly adopt a conception of legal interpretation theory (and, more generally, of Law) as an enterprise of cognitive nature which essentially constructs concepts, definitions, and stipulations, in order to make the identified sphere of knowledge more perspicuous.[2] This proposal can be conceived as a first step towards a research effort on the relations between (Peircean) semiosis and legal experience.[3]

The paper is structured according to the following steps. In the first part, I outline the historical background of the analysis, reconstructing some significant characteristics of constitutional interpretation within post-war constitutionalism. Subsequently, I highlight some decisive aspects of the peculiar practice of signification as used in the legal field. I then move on to reconstruct the constitutive categories of the sign relationship outlined by C.S. Peirce, identifying analogies and differences between the theory of "unlimited semiosis" and particularist reasoning in the ethical-juridical field. Based on some theses developed by U. Eco in the field of semiotics, I also attempt to illustrate the reasons supporting the suitability of adopting a "semantic model with instructions in the encyclopaedic format", as a paradigm for constitutional interpretation and more particularly for the interpretation of rights. Lastly, to wrap up the paper I summarise the main conclusions reached by the analysis.

2. Some remarkable aspects of the language of rights within the contemporary constitutionalism

As it should be evident, even from a superficial glance, legal language has a varied, multidimensional nature: it contains technical terms, terms coming from everyday language, and terms that come from other non-legal knowledge such as scientific and technological languages. Natural and formal aspects, spontaneous social practices, and an authoritative administration of social interaction are all present within legal language[4].

From this point of view, constitutional language is not an exception, which means that it presents itself as constitutively opaque and "open-textured", equipped with a pronounced semantic openness and variously interwoven with evaluative terms. We can quote here in full a passage by Aharon Barak (2005: 372-373, italics in the original) which is particularly clear in this regard:

> [c]onstitutional language is no different than any other kind of language. It is the natural language used by a given society, at a given point in time. Constitutions, however, contain more "opaque" expressions than other

[2] A conception of the epistemological status of the theory of interpretation similar to the one used in this article can be found in MacCormick (1978: XIII-XIV).

[3] The conception of legal systems as structures of sign relationships is one of the cornerstones of Roberta Kevelson's research program (see, in particular, 1988). Among the scholars who highlight the relevance of semiotics for legal theory see also Jackson (1985).

[4] On the peculiarities of legal language and legal interpretation, see Canale (2012: especially 158).

> legal texts. They include many terms that could be interpreted in a number of ways, and many constitutional provisions are "open-textured" and opaque. Of course, all language can be open-textured and opaque for some sets of facts, but constitutional language is open-textured and opaque for many, if not most, sets of facts. Three primary reasons explain this state of affairs: *First*, a constitutional text expresses national agreement. In order to reach agreement, nations generally must confine themselves to opaque and open-ended terms, reflecting their ability to reach consensus only at a high level of abstraction. *Second*, a constitutional text seeks to establish the nation's fundamental values, covenants, and social viewpoints. We tend to express those concepts in value-laden language, conveying a message that is rarely clear or unequivocal. *Third*, a constitutional text is designed to regulate human behaviour for future generations. It takes a long-term view, assuming that viewpoints, positions, and social behaviour will change. It must adopt language flexible enough to include the new viewpoints, positions, and modes of behavior that cannot be predicted at the time it is written. Otherwise, the constitutional text would be obsolete the day it is enacted. At the same time, a constitutional text must be definitive enough to bind the branches of government and prevent them from behaving, in the future, in a way that is contrary to the viewpoints, positions, and social behavior that the text seeks to preserve. The language of a constitutional text must be both rigid and flexible.

In a legal-political context characterised by a "culture of justification" model (Cohen-Eliya, Porat: 2011) – in which the respect for the spheres of authority represents only a starting point for a constitutional verification of legitimacy, operated on the basis of methodological principles such as reasonableness and argumentation – the content of the constitutional provisions that recognise fundamental rights appears inextricably linked to considerations of a substantive nature: "weight" related arguments, ethical-political options, comparative analyses between opposing interests, evaluations strictly linked to moral concepts ("freedom", "equality", "solidarity" etc.).

2.1. Normative Indeterminacy and Ethically Connoted Notions

Among the most significant characteristics of post-war constitutionalism, we must undoubtedly include the large-scale diffusion of a pronounced constitutionalization of legal culture – a "process of transformation of a system at the end of which it becomes totally 'impregnated' by constitutional norms" – (Guastini 1998: 185) and, at the same time, of a dense and heterogeneous *substantive ethical content.*[5] As a result of the changes produced by the irradiation of principles in infra-constitutional systems, contemporary constitutional states present both a static and dynamic nature, in the sense that "the constitution indicates

[5] This notion refers to that complex of rights, principles, values, and interests that place a series of material constraints on the choices that can be legitimately pursued in the legislative process; see Celano (2013: 125-130).

not only the procedures for normative production but also its *substantive limits*" (Pino 1998: 219, italics in the original). From an overall perspective aimed at strengthening the coherence of the legal system or minimising its internal contradictoriness[6], not only the rules and decisions adopted by a competent body through the appropriate procedure are often seen as valid, but also so are those which do not contradict the content of the fundamental rights.

In fact, several interpreters underline that these and other structural aspects of contemporary constitutionalism suggest, if not require, the use of a model of *moral reading of the constitution* (Dworkin 1996) and various forms of extensive-evolutionary interpretation: of an interpretative approach inclined to substantivism, which recognises a certain wholeness within the constitutional system, makes use of substantive criteria in the selection of interpretative hypotheses and, if possible, aims to expand the number of legal situations protected by rights.

As Uberto Scarpelli (1987: 10, 12-13) observes, a large part of contemporary constitutional documents has been "loaded" with principles «open-ended and projected into the future to act as a guide, through various interpretations and adaptations, in the face of ever-changing problems, difficulties and conflicts».[7] These principles are also (a) generally elastic (Alexy 2000: especially 295), (b) "virtually indefinable or inexhaustible" (Modugno 2000: 98), and (c) characterised by "a surplus of deontological content" (Betti 1990: 844).

The incorporation of values and ethical principles into positive law – it is worth pointing out – is inevitably affected by the charge of *indeterminacy* (equivocality, problematicity etc.) of the substantive background conceptions to which they refer, to the point of often making it extremely difficult to separate the ethical level of value judgments from the legal-formal level of procedures. The legal culture of the *constitutionalism of rights* (see Pino 2017) tends to attribute considerable importance to constitutional principles – rules characterised by a high degree of generality and indeterminacy, in both their factuality and the legal consequences they can generate. These aspects, of course, significantly condition the interpretative, argumentative, and applicative operations regarding fundamental rights (*prima facie* rights, in this case), thus engendering somewhat variable legal consequences.

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[6] On the subject, within this rather broad debate, see at least the following Raz (1994); Amaya (2011, 2012); Alexy (2016).

[7] Scarpelli (1987: 10, 12-13). I lack the space to go into the subject more fully: I will simply point out that I believe the originalist criterion of resorting to the intention of the constituents is difficult to use, at least in the field of constitutional interpretation. Contemporary constitutions are the result of mediations between political forces that bear different substantive conceptions of public good and that, among other things, are designed to be preserved for a long period of time. Well, it seems quite complex, in this context, to access all the relevant information necessary to determine, for example, which specific conception of freedom of religion the constituent had in mind (and to which cases it should apply). The literature on the subject is endless. Please refer in particular to the following studies: Huscroft, Miller (2011); Sardo (2018).

The peculiarities of the style of drafting the constitutional provisions that attribute fundamental rights, among other issues, pose the problem of determining the content of the ethically connoted notions from which they are often formulated. From this point of view, an emblematic example of a controversial expression that frequently appears in constitutional language concerns the value of human dignity: within both the legal-theoretical debate and on the level of doctrinal interpretation, dignity can be conceived, on the one hand, as the pivot or foundation of the constitutional system, and on the other, as a single constitutional right. The inherent heterogeneity of this notion's interpretative reach makes it particularly difficult to reconstruct a minimal semantic basis for it that is reasonably acceptable to all interpreters. One can think, for example, about of Article 3 of the European Convention on Human Rights ("No one shall be subjected to torture or to inhuman or degrading treatment and punishment"), in which the controversial nature of words such as "torture", "inhuman" or "degrading" emerges. In these cases, we are faced with "thick moral concepts" which, among other things, have the peculiarity of incorporating relevant cultural information in relation to the axiological background in which they are inserted (the evaluative and descriptive-factual components appear then to be inextricably intertwined).

Indeed, here one can see quite clearly the expression of an evaluative-emotional attitude towards a specific object, which requires a delicate work of determination as to its content. Faced with provisions attributing rights phrased with these characteristics, as fittingly argues Bruno Celano (2013: 111), it seems in fact unrealistic to "block the emergence of considerations of substantive rationality, which are, in part, moral considerations". In order to determine the content of rights, to justify a judgement etc., it seems therefore inevitable to deal with the conspicuous presence of evaluative formulas and assume some form of moral commitment, which on certain occasions may highlight the presence of a radical dissent on the ultimate principles underlying interpretative decisions.

The *symbolic and expressive meaning*[8] with involved in constitutional clauses are imbued emerges with particular clarity in the case of provisions that recognise social rights (the rights to education, work, health etc.). On the one hand, even if destined to remain fully or partially unapplied, social rights perform the important function of reaffirming the citizens' adherence to a series of values essential for collective life. On the other hand, even if they prove to be temporarily ineffective, their recognition can still become the starting point of a claim (not necessarily on a jurisdictional level) aimed at obtaining compensation, on a legislative and political level, for the violation or excessive restriction of rights.

[8] On the symbolic-expressive dimension of declarations of rights (and on the transformative potential of claims formulated in terms of rights, even if they are rights that are not enforceable or guaranteed at the moment) see especially Feinberg (1973); Lefort (1981: 45-83); Postema (1989); Fromont (1996); Rodotà (2006: especially 42); Id. (2012, chap. 3); Kramer (2008: especially 426). The perspective of logical expressivism and semantic antirealism appears consistent with this dimension, on a semantic level; see in particular Peregrin (2014); Brandom (2008); Besson (2019).

2.2. Interpretative problems and argumentative techniques peculiar to the constitutionalism of rights

In a type of legal and political system that presents these synthetically referenced above characteristics, both the norms and the principles, albeit with different degrees of intensity and with a different frequency (in both instances greater, obviously, in the case of principles), tend to be characterised by their (a) *vagueness* (the presence of predicates whose application is imprecise because they are present in "border cases" in which it is not possible to define exactly where the concept in question begins and ceases to be applicable); (b) *controvertibility* (the presence of terms that offer difficulties to reach an agreement about their for substantive reasons); and to also present an (c) open texture (impossibility of delimiting their scope of application in advance and in a comprehensive manner). Their formulation may contain predicates whose application is uncertain due to quantitative factors, or terms on whose meaning there is no agreement for substantive reasons; then, there are also cases in which it is not possible to delimit *a priori* and exhaustively all the possible exceptions to which a rule is subjected. These aspects, which can occur separately or simultaneously, bring with them various interpretative difficulties that may concern, to a different extent, to both principles and norms.

Within a model of substantive legal culture such as the one that characterises today's "constitutionalism of rights", at both doctrinal and practical levels, interpreters are called to deal with the frequent presence of hard cases, gaps, normative antinomies etc.: problems whose solution often requires (or suggests) freeing oneself from the typical technicalities of legal interpretation of infra-constitutional nature, to instead resort to peculiar techniques such as proportionality or balancing; equitable or practical reasonableness; to various tools of "integration" and "construction" of law that in the philosophical-juridical debate tend to be ascribed to the concept of interpretation only in a broad sense.[9]

A significant feature of constitutional interpretation[10] is the greater intensity and assiduity with which it may encounter "*essentially controversial concepts*" (see Gallie 1956): polysemous notions, used in different contexts (moral, political, legal etc.) with sometimes significantly different meanings, and often emotionally connoted; terms whose semantic extension makes any attempt at definition or cataloguing particularly problematic. In a constitutionalized legal system, the interpretation made by law enforcement bodies takes on an at least partly inventive and discretionary character. In the presence of an uncertain situation, faced with general rules that are often opaque or flexible, it is usually necessary to resort to a choice between different interpretations

[9] The distinction between "interpretation in the narrow sense" and "interpretation in the broad sense", indeed not always accepted by all authors due to its rigidity (just as the line of demarcation between interpretation in the narrow sense and integration of law is not always clear), is outlined in particular by Wróblewski (1979: 74-112); Guastini (2011: 32 ff.). A different proposal – one between "textual" and "meta-textual" interpretation – can be found in particular in Chiassoni (2007: 60-64).

[10] Within the very extensive literature on constitutional interpretation, see at least Marmor (1995); Moreso (1997); Ferrer Mac-Gregor (2005); Barber, Fleming (2007); Pino (2010).

to determine the actual content of the constitutional provisions, thus opening up the scenario of a plurality of "*constitutionally possible worlds*" (Moreso 1997: 167). There is abundantly evident that, in a legal-political context with these characteristics, the task of the jurist-interpreter cannot be limited to the mere grammatical or syntactic dimensions of the normative text, it is equally necessary to concretise the meaning of the linguistic signs present in the dispositions against the background of the historical-social context.

Now, the acceptance of the inevitability of these phenomena can be easier – or at least, this is what I expect to demonstrate – if the interpretative processes are inserted into a broader hermeneutic-semiotic framework that regards the legal cases as sign functions, underlining how the theoretical complications present in the legal field are not at all different from those found in any other interpretative activity that involves the use of a historical-natural language.

3. The Semiotic Loan in the Drafting of Constitutional Provisions

Taking up a canonical distinction within the philosophy of language, we can assume that the meaning of any linguistic expression contains two dimensions: the *sense* or intension – which represents the intra-linguistic component of the meaning – and the *reference* or extension – that is, the relationship of the word to the object it denotes. The most comprehensive elaboration of this dualism dates back to Friedrich Ludwig Gottlob Frege (1948) in his famous essay "*Über Sinn und Bedeutung*"[11]. Discussing the concept of identity, the author develops an analysis of the conceptual or informational content that concerns all categories of linguistic expressions: singular terms, predicates, and sentences. Without delving into the complexity of Frege's analysis, it is sufficient here to note that it establishes a basic separation between: (i) the sign or linguistic expression; (ii) the meaning, or mode of presentation of the object; (iii) the reference or extension, *i.e*., the object itself. To summarise it in an extremely schematic way: the realm of reference concerns the relationship between language and extralinguistic reality, that is, the external world; on the other hand, the contents that speakers are able to associate with the expressions they use to understand and utilise language fall within the scope of meaning. A singular term's reference is constituted by the object it denotes, while the meaning is developed by how this object is presented; the reference of a statement coincides with its truth value, and the meaning with the thought expressed by it. This last dimension, since it (i) can be expressed in a language (ii) can be grasped and shared by all individuals, should not be confused with the subjective and intrapsychic representation (*Vorstellung*), *i.e.*, the mental image that speakers tend to associate with every expression.

[11] As regards the terminology adopted, it is clear that these are two words whose use is as widespread as it is vague, although within Fregean reflection they take on a rather technical and specific meaning. The term '*Bedeutung*', strictly speaking, should be translated literally as 'meaning'; for the needs of conceptual clarification, however, several translators tend to opt for "reference" or "denotation".

Having established these premises, it becomes evident that the tendency to include multiple linguistic signs of everyday vocabulary – terms, phrases, sentences etc. – which designate objects (entities, properties, relationships, facts, states of affairs, events, processes etc.) whose reference appears rather obscure, if not actually non-existent, is certainly a significant characteristic (although not a peculiarity) of the *discursive-communicative status of law*. In other words, the fundamental elements of the legal vocabulary – think of notions such as those of subjective rights, contract, crime, property etc. – they are extraneous to the physical world: they do not exist "in nature", they appear to be endowed with a peculiar mode of existence that does not coincide with that of natural phenomena[12]. The essential structure of legal norms is therefore irreducible to physical entities or biological relationships. Law is a reality which, contrary to what "the man who comes from the countryside" would expect in Kafka's famous parable "Before the Law"[13], it cannot be seen with one's eyes or touched with one's hands, and yet it has a strong empirical impact on social life.

In this peculiar practice of signification and communication, legal practitioners, along with legal theorists and society as a whole, are essentially required to "do things with words" (see Austin 1975): that is, they are the first who are called upon to indicate to their associates (and therefore to themselves) how they must act, or better yet, what behaviours they must avoid in order not to incur in sanctions; they are required to cooperate to the task of defining the law and its limits.

The *semiotic loan* found in legal language provides that, in the attempt to forge (provisionally considered) correct legal arguments and reasoning, the words and syntaxes applied are mostly pre-existing, rarely ever being created *ex novo* or taken from other technical languages. The protagonists of this process are not only the constitutional and ordinary judges but, in some ways, also the legislator, theorists of law, and society itself – as they are an integral part of the *interpretive community*[14]. In reconnecting the practices of the associates to a specific legal-institutional tradition, all these subjects, naturally to different extents and with different roles, contribute to establishing "the constitutive rules, *i.e.,* the fundamental grammar that supports and defines the practice of judging" (Viola, Zaccaria 1999: 192).

Once inserted within the legal universe, these terms and syntaxes tend to give life to new notions which are often endowed with a distinctly specialised dimension. This "*fusion of horizons*"[15], that is, the encounter between the different linguistic universes of

[12] Some reflections on the more general theme of the extra-natural reality (artificial, conventional etc.) of law, with particular emphasis on the liberal impact of the divisionist approach, please refer to Kelsen (1943); Popper (2013; vol. I, especially. chap. V). The issue had already been addressed with a different approach, aimed at highlighting the "magical", "supernatural" origin of various legal institutions by Hägerström (1927).
[13] See Kafka (2009: 153-156). Among Kafka's interpreters, Derrida (1994) particularly insists on the immaterial dimension of the law.
[14] On this notion, see in particular Pariotti (2000); Schauer (1990: 251 ff.).
[15] The expression was used for the first time with a hermeneutic meaning by Gadamer (2004: 300-305).

the interpreter and the interpreted object, can occur through various modalities: through transfers or shifts in the ordinary meanings, metaphorically or metonymically, through a further delimitation of the content of the words, or other similar strategies.

So, a consequence of these premises is that the interpretation (and application) of the "*living law*"[16], of law understood as a form of life closely intertwined with other areas of society, is influenced not only by the set of jurisprudential precedents but also by the very evolution of linguistic practices (the variation of legal-political concepts, in particular[17]) within the various historical, cultural, social contexts etc. Therefore, it is appropriate, from this perspective, to conceive *nomopoiesis* as an attempt to adapt to the complexity of the social environment and, in parallel, to regard the constitution itself as an evolutionary achievement in a relationship of close integration with other social subsystems.[18] In other words, there is a structural connection between the legal system and external environmental inputs, deriving in particular from the political and economic spheres.

4. Unlimited Semiosis and Particularist Reasoning: Semiotic Habits and Criteria for Stabilising Meaning

4.1. The triadic structure of interpretation in the reconstruction of C.S. Peirce

According to Charles S. Peirce's reconstruction, the elementary structure of every interpretation presupposes a triadic relationship between a first sign which stands in place of another – the *representamen* – a second element represented by the first – the *object* – and a third sign that connects the first to the second – the *interpretant.* This last element constitutes, in turn, an additional relationship between the representative, the object, and the interpretant. A *semiotic subject*[19] necessarily calls into play another subject

[16] Originally formulated by Eugen Ehrlich 1913, the concept can now be considered currency within present legal-theoretical debates. For a broader perspective (not limited to jurisprudential interpretative practice), please refer to the analyses of Resta (2008).

[17] «Conceitos fundamentais do direito atual, como os de direito subjetivo, de pessoa jurídica, de relação jurídica, de generalidade da norma, de não retroatividade das leis, de igualdade jurídica e política, de primado da lei, de Estado, são relativamente modernos na cultura jurídica europeia, não existindo de todo noutras culturas jurídicas. Frequentemente, esta descontinuidade e inovação na história jurídica é encoberta pela própria maneira de fazer história. Os historiadores do direito fazem, frequentemente, uma leitura do direito passado na perspectiva do atual, procurando lá os "prenúncios", as "raízes" dos conceitos, dos princípios e das instituições atuais. Por exemplo, se estudam o Estado, procuram nos direitos da tradição europeia, nomeadamente no direito romano, entidades que dispusessem de certos atributos (mas não de outros, como o monopólio de criação do direito, ou um poder de plena disposição em relação à ordem jurídica) do Estado atual (por exemplo, o conceito de *populus romanus*, o conceito de *imperator*)» (Hespanha 2012: 125); on these topics, see also Koselleck (2004), and more generally, the studies of the so-called "*Begriffsgeschichte*".

[18] This is, in broad terms, the systemic approach defended by Luhmann (1981), which was later taken up and expanded especially by Teubner (2012).

[19] «[T]he semiotic subject is a way of looking at the world and can only be known as a way of segmenting the universe and of coupling semantic units with expression units: by this labor it becomes entitled to continuously destroy and restructure its social and historical systematic concretions» (Eco 1979, 315).

that operates semiotically and so on, in a process that gives rise to an infinite chain of interpretants – which the author refers to as "*unlimited semiosis*"[20].

From this perspective, thought it is produced solely through signs and sign references, that is, by significant relationships of referral from one thought to another, in an unstoppable trajectory that never encounters the external "thing", except as a sign itself: approaching the object in its autonomous essence – as a "thing in itself" ("*Ding an sich*"), to put it in Kantian terms – constitutes an insurmountable limit. Each sign is therefore conceivable only within a "*triadic action process*", a circuit that presupposes cooperation between three elements that cannot be conceived separately except as conceptual constructions.[21]

In the words of Peirce (1994: 2.228, italics in the original):

> [a] sign, or *representamen*, is something which stands to somebody for something in some respect or capacity. It addresses somebody, that is, creates in the mind of that person an equivalent sign, or perhaps a more developed sign. That sign which it creates I call the *interpretant* of the first sign. The sign stands for something, its *object*. It stands for that object, not in all respects, but in reference to a sort of idea, which I have sometimes called the *ground* of the representamen.

A sign is precisely what causes an addressee (its interpretant) to refer to an object with which it itself (its object) relates in the same way, becoming the interpretant in turn a sign – and so on *ad infinitum* within a continuous *circularity*[22]: if this cycle is interrupted, the sign, as such, would lose its character as a signifier.

> A sign – the author observes again – stands *for* something *to* the idea which it produces, or modifies. Or, it is a vehicle conveying into the mind something from without. That for which it stands is called its *object*; that which it conveys, its *meaning*; and the idea to which it gives rise, its *interpretant*. The object of representation can be nothing but a representation of which the first representation is the interpretant. But an endless series of representations, each representing the one behind it, may be conceived to have an absolute

[20] This notion was later widely adopted by Eco 1979, 1981.

[21] «Le unità culturali sono astrazioni metodologiche ma sono astrazioni 'materializzate' dal fatto che la cultura continuamente traduce segni in altri segni, definizioni in altre definizioni, parole in icone, icone in segni estensivi, segni estensivi in nuove definizioni, nuove definizioni in funzioni proposizionali, funzioni proposizionali in enunciati esemplificativi e così via; essa ci propone una catena ininterrotta di unità culturali che compongono altre unità culturali» (Eco 1975, 105).

[22] «Anything which determines something else (its interpretant) to refer to an object to which itself refers (its object) in the same way, the interpretant becoming in turn a sign, and so on *ad infinitum* […]. If the series of successive interpretants comes to an end, the sign is thereby rendered imperfect, at least» (Peirce 1994, 2.303).

> object at its limit. The meaning of a representation can be nothing but a representation. In fact, it is nothing but the representation itself conceived as stripped of irrelevant clothing. But this clothing never can be completely stripped off; it is only changed for something more diaphanous. So, there is an infinite regression here (Peirce 1994: 1.339).

There is no way, according to this perspective, to establish the meaning of an expression, that is, to interpret it, except by translating it into other signs which will inevitably add new information to the interpreted expression. The concept of representation, by logical necessity, implies an infinite postponement: the idea of a *continuum* without an initial or a final moment. We are therefore plunged into an inexhaustible path of interpretation that moves through permanently reformulated meanings. Hermeneutic theory itself seems to converge on this point as it reflects on the idea of "*pre-understanding*" or "expectation of meaning" ("*Sinnerwartung*", in the terminology of Hans Georg Gadamer 2004, *passim*), which sustains the cognitive process[23]: each sign is interpreted by another sign, based on the preliminary assumptions that guide the understanding.

If we consider a literary text (remembering that anything can temporarily perform the function of a sign) – for example Giacomo Leopardi's *Paralipomeni della Batracomiomachia* or James Joyce's *Ulysses* – it can be noted without too much difficulty that it never presents itself as an isolated entity but rather as a part of a network of cultural relationships with other texts by the same author and with contemporary or preceding literary models.[24] Any text, however sectorial its scope of application may be, is inevitably imbued with the contents and contributions present in the literature on the topic addressed by it and beyond. Its very genesis is historically and socially conditioned, and this aspect is true both on a diachronic and synchronic level. And so, obviously, this type of discussion applies to any field, not just literature.

In this perspective, as Umberto Eco (1979, *passim*) in particular shows, the central function within the semiotic process is carried out by the interpretant: it introduces and structures the sign relationship from within and activates it by mediating its terms (sign and object); being in this sense a means to understand its meaning. This understanding will always inevitably be partial, as the possibility of approaching a meaning is offered only in an asymptotic way, without it ever being possible to grasp its global essence: the use of interpretants is, by definition, potentially infinite, continuously revisable. Signification (and communication), through continuous movements, which refer a sign to other signs

[23] Sini (1981: part I) highlights the compatibility of the thesis of the pre-comprehensive foundation of interpretation with the idea of the "hermeneutic circle" proposed by Martin Heidegger in par. 32 of *Being and Time*. It should be specified that the expression in fact first appears in *The Rise of Hermeneutics* of Wilhelm Dilthey (1990) and that the theme of the circularity of understanding, albeit succinctly, had already been addressed by Friedrich D.E. Schleiermacher (1985).

[24] Cf. in particular Kristeva (1969). Arguing a similar position is Roland Barthes (1984), which underlines how the significance of intertextual links and the role of the reader ends up reducing the author's function.

or to other chains of signs, circumscribe cultural units without ever reaching the point of "touching" them directly but still making them accessible through other cultural units.

The consequences of this discussion seem at first glance rather disturbing: since the *contexts of use* (the textual, institutional, historical-social contexts etc.) are infinite, the structural plurivocity of the signs' risks precipitating the interpretation into an unstoppable drift. However –Peirce (1994: 5.475) himself insists on this point–there are generally certain "*semiotic habits*" present in human being which, within the various situations that arise on the day-to-day, lead us not to persevere beyond certain unreasonable limits in the exploration of the entire universe of possible interpretations, thus avoiding an infinite regress.[25]

For example, meticulously reflecting on the enormous network of semantic relations that can be associated with the word "State", it could represent a sensible operation for a lexicographer or even for a lexicologist; but it would appear decidedly inappropriate for a jurist, a political scientist, or a sociologist interested in working with a notion of the modern state within a specific theoretical controversy – hypothetically, to determine whether it is truly usable, and if so to what extent, therefore addressing the idea of statehood in the context of that historical phase, in which it is globally characterised by the progressive overcoming of the medieval legal-political system, and which in various ways has been considered as the era of the twilight of "traditional society", the "dissolution of community life", or the "transition to modernity".[26]

4.2. Pre-understanding and defeasibility in constitutional interpretation

The idea of the circularity of understanding mentioned in the previous paragraph presents interesting applications at the level of constitutional interpretation.

Following an influential reconstruction by Robert Alexy (1996), we can distinguish three types of hermeneutic circles within the legal field: a) in relation to the text (a hypothesis related to the correct solution of the problem, which it is necessary to decide about; b) in the relationship between the part and the whole (the interpretation of a norm presupposes the understanding of the normative system to which it belongs and, in parallel, the understanding of a normative system is not possible in the absence of an interpretation of the individual norms that belong to it); c) in the relationship between norms and facts (the norms are universal and abstract, the facts to which they must be applied are individual and concrete – in the interpretation, it is necessary to consider all the distinctive features of the fact and all the distinctive features in the possibly applicable norms).

[25] «The densely sedimented habits of the historical community in which legal practitioners assume their representative roles are among the most important dynamical objects to be considered in reference to law, just as the newly emerging interpretants generated by legal decisions are among the most significant effects of legal semiosis» (Colapietro 2008: 243).

[26] See, respectively, Weber (2019: 401); Tönnies (2001: 170); Peces-Barba Martínez (1982, *passim*).

Now, on the more specific level of constitutional interpretation, in the argumentation and justification of decisions, hermeneutic circularity emerges above all in the relationships of mutual implication between fundamental principles and values (see especially Taruffo 2020: 105 ff.). A relevant basis of the pre-understanding that orients the interpretative activity of jurists and theorists is represented by the guiding values positivized at a constitutional level as the foundation of the legal-political system in question. This reasoning can be reproduced in the following terms: 1) The constitution is a meaningful body with its own global wholeness and coherence[27] – a set of generally supportive propositions or statements that refer to a common axiological background (which naturally does not exclude, as it has already been observed, that collisions between constitutional rights may arise during application). 2) Given these premises, the interpretation of the constitutional provisions that recognise fundamental rights presents itself as an activity guided by a "pre-theoretical" intuition relative both to what they prescribe and to the factual situation they regulate.[28] 3) Consequently, the justification of an interpretative hypothesis is strongly conditioned by its consistency to the rest of the normative elements relevant to the decision. Assuming that coherence relations are symmetric – that two consistent elements are mutually interdependent, and not that one is deduced from the other based on a linear conception of the inferential chain[29] – thus it seems possible to avoid that propensity towards circularity and conservatism that represents a problem constantly found in coherentist theories.[30]

In this operation, various evaluations of the interpreter's reasonableness can cooperate, such as, in particular, one's own cultural and methodological training or considerations relating to the evolution (social, economic, political, technological, etc.) of the historical context in which one operates; the *communis opinio* or generalised consensus of the legal community; the role played by legal dogmatics; the opinions of jurists or technicians who may have been consulted; the argumentative techniques widespread in the legal culture of reference; the jurisprudential precedents; reflections on the consequences of interpretative decisions for the community; the identification of substantial (even if implicit) principles and values. Here we find ourselves faced with rules, canons, codes, and linguistic conventions endowed with their own normative nature, which in the legal field plays a role entirely analogous to the "semiotic habits" to which Peirce refers.

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[27] Taking up an insight by Bruno Celano (2006: 146), we can identify a basic analogy between the holistic conception of practical reasoning and the representation of the process of construction and revision of scientific theories developed by Willard Van Orman Quine, which compared them to force fields that "touch" the experience by reacting only within its borders («l'insieme delle ragioni che di volta in volta individuiamo, e dei valori ad esse sottesi, è una totalità (una corporazione), articolata al proprio interno, che "tocca" il mondo (l'universo, indefinito, delle situazioni possibili: l'insieme dei casi possibili) ai propri confini»; *ibid.*).

[28] On the nexus between declarations of rights and background ethical-political doctrines, see especially Celano (2013: 94-95).

[29] I follow, here, the approach of Amaya 2012 («[e]l *problema de la circularidad* sólo surge si uno acepta una concepción lineal de la inferencia según la cual la justificación es una propiedad que se transfiere de una creencia a otra a través de una cadena. Sin embargo, el modelo de coherencia propuesto rechaza esta concepción "tubular" de la justificación y se basa, por el contrario, en una concepción holista según la cual la justificación de una hipótesis fáctica o interpretativa depende de su coherencia con el resto de los elementos relevantes» (*ibid.*: 81). On the intertwining of continuity and innovation in interpretation, cf. Raz (2009).

[30] An objection of this type can be found, for example, in Raz (1986).

These guiding criteria, which cannot be traced back to moral reasoning devoid of any connection with legal proceedings, can constitute an important stabilising factor for the interpretative activity of legal practitioners and jurists, thus allowing a certain degree of social control and verification of its correctness. However, since these are flexible and sometimes conflicting directives, when establishing jurisprudential guidelines, we can only speak about provisional and reviewable "rules of thumb": normative generalisations of particular decisions which are not necessarily valid for future cases and therefore cannot be exhaustively predicted. These constraints, along with the very dimension of textuality, are not intended to suppress any room for freedom for the interpreters but rather to contribute to containing them (see, in this sense, Raz 1979: 75).[31]

In this task of projecting cases from the past to the future, the set of possible combinations of the properties relevant to the decisions is in principle inexhaustible, thus exposing any abstractly correct interpretation to the eventuality of recalcitrant cases. Significant examples of "defeaters" can be found in both within criminal law and private law. While the former involves causes of justification (state of necessity, self-defence, exercise of a right) that lead to the reconsideration in the phase of application, the latter presents the category of defects of consent – factual circumstances that likely will become invalid the consent of a contractual stipulation. Even more, in the field of judicial reasoning, particularly when concretising constitutional principles (basically those constitutional principles that recognise fundamental rights)".[32]

For example, the position of the Spanish Constitutional Tribunal on the classic conflict between the right to information and the right to freedom of expression, on the one hand, and the right to privacy and protection of one's image (protected by articles 20.1, 20.4 and 18.1 of the Spanish Constitution), on the other hand, can be summarised by using the following formula: «[e]l derecho a la información prevalece sobre el derecho al honor, salvo que la información sea injuriosa o, aun no siéndolo, no sea veraz o carezca de relevancia pública» (Mendonca 2003: 79). The first step consists of building a taxonomy that allows each case to be placed within a specific category; subsequently, there is the development of some conditional priority rules which do not imply a strict hierarchization but only an open and reviewable order. The most important of these rules states precisely that when a collision occurs between freedom of expression and the right to privacy the conflict must be resolved in favour of the latter right, but the right to information must prevail whenever the informational content is truthful and of public relevance. This rule must be understood as fragmentary, open and incomplete, since nothing excludes the possibility of new circumstances arising in the future, which will require adding other conditions to those already established or reformulating the concepts of "truthfulness" and "public relevance".

This practice is undoubtedly subjected to a form of intersubjective control: the solutions identified can represent guiding models for future cases, legitimizing the possibility of identifying interpretative habits. However, the possibility remains always open for the court to free itself from the constraints constituted by the precedents.

[31] See in this sense Raz (1979: 75).
[32] On these issues, see in particular Celano (2016).

5. Encyclopaedic Semantics

Based on the influence of C.S. Peirce's work, since the 1970s Umberto Eco (see especially 1997) theorised about the superiority of a "*semantic model with instructions in encyclopaedic format*"[33], referring with this notion to a network of interconnected *cultural units* or "portions of knowledge", as opposed to a more rigid *dictionary-like semantic models*, in which each meaning is simply made up of a series of minimal, self-sufficient units.[34] In a semantic universe with an encyclopaedic dimension – the author argues – meaning is determined by the use of concepts linked to our general experience or knowledge of the world, to culturally predefined beliefs and structures that we have absorbed over time. The encyclopaedia represents a semiotic postulate or a regulatory hypothesis: the recorded set of all logically possible interpretations, the archive of all verbal and extra-verbal information, which as such can never be described in its entirety. The main objective of this theoretical category is to account for the mechanisms of sense-making in various communicative contexts, predicting the circumstances and situations in which a word would take on specific meanings. In a semantic system of this type different routes of interpretation can be undertaken depending on the contexts and choices involved, continuously reorganising the system through unpredictable paths. Within this multiplicity of knowledge articulations, a principle of (free) interpretative choice can also find space in contextual and circumstantial selections.

The notion of encyclopaedia is associated by Eco with a "*rhizomatic*" or "*n-dimensional*" model of knowledge. This choice derives from the fact that, as Gilles Deleuze and Felix Guattari initially demonstrated[35], the morphology of the rhizome does not present determined and stable positions but only lines of connection: a rhizome can be broken at any point and, through continuous resegmentations, reconnect to its own line, in a tortuous route that resembles the path of a labyrinth. By virtue of these characteristics, the rhizome lends itself to symbolizing an *ahierarchical and acentric conception of knowledge*. Conversely, an "*arborescent*" and *hierarchical* vision of knowledge is emblematically present in the systematization of Aristotelian logic carried out by the Neoplatonic philosopher Porphyry, in his "*Introduction to Aristotle's Categories*".[36] The theory developed by Porphyry is a philosophical system based on binary options, articulated on vertical

[33] On the notion of encyclopaedic knowledge (seen as inseparable on a conceptual level from semantic knowledge), cf. Rumelhart (1993); for a detailed description of the ways in which encyclopaedic knowledge is developed and preserved, cf. Perry (1986).

[34] As Violi (1997: 82) shows, we can consider them "dictionary-like semantics" which are based on a compositional hypothesis, *i.e.,* on the idea that the terms can be broken down into further more general units of meaning, and are based on two precise assumptions: «1. i tratti semantici su cui si basa la scomposizione costituiscono un insieme di condizioni necessarie e sufficienti […] per la definizione del significato; 2. tali tratti costituiscono un inventario limitato di termini primitivi».

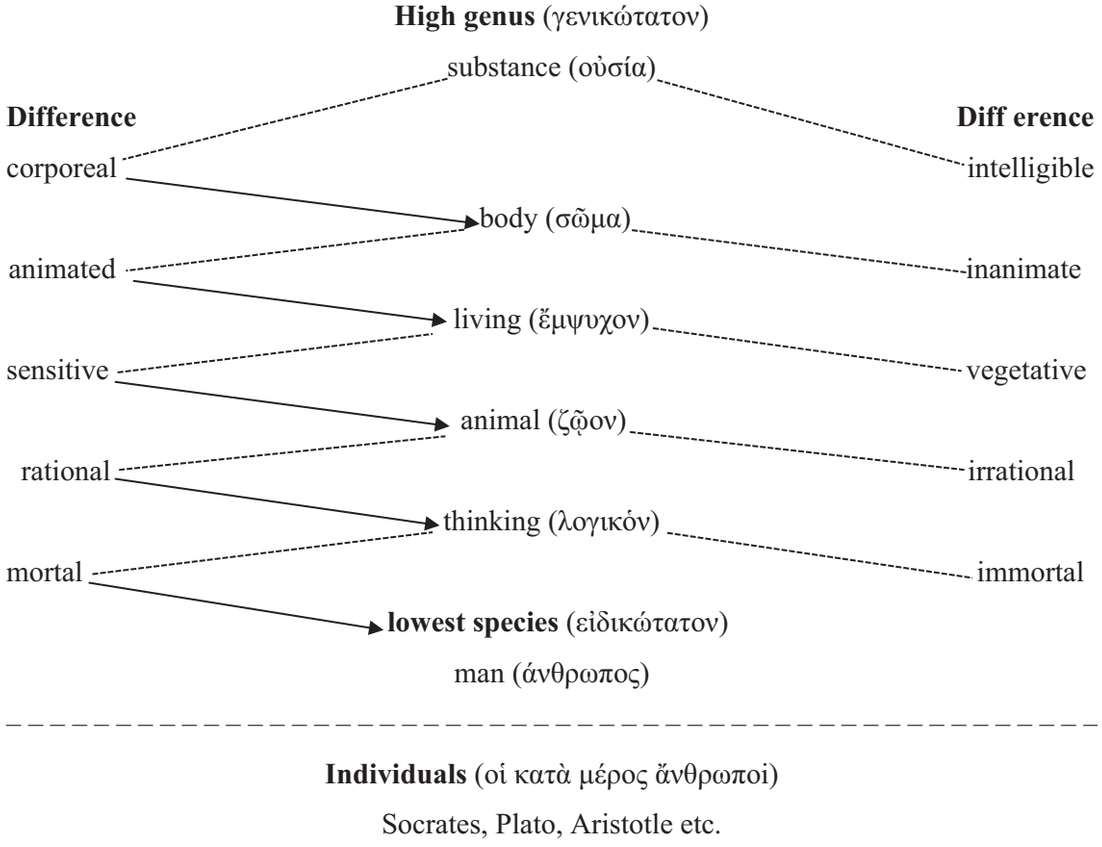
[35] The theoretical categories used by Eco in his reflection on the encyclopaedic model are largely taken from Deleuze, Guattari (1972; 1980).

[36] Written between the years 268 and 270, the work is also known by the title "On the Five Voices", to indicate the ways (κατηγορούμενα, *praedicabilia*) by which, according to Aristotle, a predicate can be attributed to a subject which Porphyry divides into five classes: genus, species, difference, property, and accident.

and linear connections, in which Eco pinpoints the canonical formulation of the "*strong thought*", prone to foundation, and endowed with the ambition of mimicking the structure of reality, which influenced much of later Western logic. In this way, a systematic theory is outlined, focusing on the identification of essences and hierarchies and thus providing "for the definition of a term (and the corresponding concept), only those properties necessary and sufficient to distinguish that concept from others" (Eco 2007: 13), that is, those minimal elements that cannot be further analysed (the primitives) which, through their articulation, allow us to represent an indefinite number of lexical units.

> The supreme genus – we read in the *Introduction to Aristotle's Categories* – is that above which there cannot be another higher genus; instead, the ultimate species is that under which there are no other subordinate species; intermediate between the supreme genus and the ultimate species are other terms, which are at the same time genera and species, in relation to different subjects (Porphiry 1887).

In this and other passages, the philosopher summarises the principles that the subsequent philosophical tradition would translate graphically into the famous *arbor Porphyriana* or *scala praedicamentalis*: a table showing the coordination and subordination of genera and species. Below is an example of this arboreal diagram:



The ambitious idea contained within this theoretical framework is the proposal to build a classificatory system in which, concerning the genera and species, there is a purely formal and vertical relationship between (using terminology foreign to Neoplatonism) hypernymous and hyponymous terms. For example, if we consider three levels of the tree, the intermediate one will be a *species* with respect to the level above it and a *genus* with respect to the one below it. From the *supreme genus* (substance), we descend, through the various specific *differences*, to the *lowest species* (in this specific case, the human being is understood as a mortal rational animal), and then finally arrive at the individuals.

However, the main aspect that makes the Aristotelian-Porphyrian model the prototype of dictionary semantics is its closed structure, developed in a way that excludes other genera above the supreme genus and other species below the lowest species – it is an indispensable defining condition. The inconsistency of this according to Eco's (2007: 20) opinion, is founded on the fact that it does not contemplate certain differences (for example, the ones between man and horse). To include them, it would be necessary to integrate the tree with subsequent disjunctions (dividing the species of mortal animals into rational and irrational, even if it would then be necessary to introduce a further criterion to distinguish horses, for example, from donkeys). The "differences are necessary and sufficient conditions to distinguish one being from another and make the *definiens* coextensive with the *definiendum*, so that, if a MORTAL RATIONAL ANIMAL, then necessarily *man*, and vice versa" (*ibid*.). However, to meet this condition, the only solution is to allow a difference to appear under multiple genera (and multiple times), thereby undermining the finiteness of the tree. And if the closure of the tree/dictionary cannot be guaranteed, then it becomes potentially open, infinite, and the purity criterion irremediably collapses, making it "a *context-sensitive* structure, not an absolute dictionary" (Eco 1985: 473). The functioning of Porphyry's tree, which is based on the addition of differences to genera in order to create species, depends on elements truly endowed with encyclopaedic properties whose provenance is necessarily external to the tree. These elements are precisely the differences, that is, the accidents (and being as such of indefinite number) and qualities (in fact predicated of substance). Therefore, "the tree of genera and species, however it is constructed, explodes into a dust cloud of differences, into an infinite whirlwind of accidents, a non-hierarchical network of *qualia*" (*ibid.*: 475). As a consequence of these factors – Eco argues – the extension and branching of the tree are unpredictable and potentially infinite, both upwards and downwards. Porphyry's tree, following this deconstruction, dissolves into a sort of labyrinth with infinite ramifications devoid of hierarchies.

6. Applications in the Field of the Constitutional Interpretation Theory

The theses considered so far seem to provide some relevant indications in terms of the constitutional interpretation of rights theory. The use of this approach, it should be noted, does not fulfil the function of indicating the substantive criteria to conduct a correct interpretation of the constitutional provisions which confer rights. It cannot tell us, for example, what is the best possible interpretation of the constitution in certain circumstances, how information is represented and acquired, what are the rules of inference, the criteria

for selecting the premises, and stopping factors within the interpretative processes. Its objective is rather to illuminate several considerable aspects that characterise the contextual dependence of the interpretation of constitutional rights.

Shifting attention from the level of interpretation "in a very broad sense" (the understanding of any object as a cultural phenomenon)[37] to that of legal interpretation, it must first of all be recognised that, unlike ordinary interpretative and communicative contexts, in this field the provisions are taken as a starting point for an inferential elaboration and the subsequent production of norms. This process occurs within a given legal system – most of the time in the context of application, with an unavoidable authoritative and practical-institutional dimension, as well as in the doctrinal context, through the elaboration of the normative texts' content for essentially theoretical purposes.

The preceding analysis should first of all lead to conceiving that particular argumentative and decision-making technique which establishes balancing as an operation instrumental to the attribution of meaning to the constitutional provisions which confer fundamental rights – functional, therefore, to the determination or specification of their content. Secondly – but the two themes appear closely connected – the very distinction between "abstract interpretation" and "concrete interpretation" (of rights) is particularly precarious.[38] Bearing in mind how problematic the separation between the analytical and the synthetic is, it becomes to understand that even the abstract interpretation of rights is always necessarily conditioned by the reference to concrete cases. More generally, from a semiotic perspective, it is difficult to separate clearly legal theory from interpretation as application – as Roberta Kevelson (1988: 36, italics in the original) points out – «*[d]iscourse as a mode of communication is action, and every action presupposes a consequence*».

An approach that inserts interpretative processes into a broader hermeneutic-semiotic framework should help accepting that the theoretical complications present in the legal field are ultimately not dissimilar from those found in any other interpretative activity which implies the use of a historical-natural language. Using Husserlian terminology, it can be stated that an awareness of this type, among other things, should lead the legal theorist and the jurist-interpreter to move away from a "naïve-natural" attitude to a phenomenological or transcendental perspective.[39]

In this context, there are some relevant clarifications. [1] Rights do not rain from the sky, they do not represent a gift from nature but develop as a succession

[37] See, on this notion, Dascal, Wróbleski (1988).

[38] In Riccardo Guastini's classic description, the interpretation "in abstract" ("text-oriented") consists «nell'identificare il contenuto di senso – cioè il contenuto normativo (la norma o, più spesso, le norme) – espresso da, e/o logicamente implicito in, un testo normativo (una fonte del diritto) senza riferimento ad alcuna fattispecie concreta»; in contrast, the "concrete" ("fact-oriented") interpretation consists «nel sussumere una fattispecie concreta nel campo di applicazione di una norma previamente identificata 'in astratto'» (Guastini 2011: 15-16; see also, with some divergence, Id. 2004: 83, f. 16).

[39] For a parallel between the role of the interpreter in the legal field and that of the interpreter *tout court*, please refer to the observations of Colapietro (1989: especially 27-48); Id. (2008).

of different evolutionary processes: philosophical theorisation, positivization, generalisation, internationalisation, specification. Historically – it can be stated with some caution – rights came to be in the Western European world of the 16th and 17th centuries following tensions and dissents, claims and battles, and as a result of the interaction of various causes of a socio-economic, geopolitical and ideological nature: the birth of capitalism and the modern state, the progressive humanization of criminal and procedural law, the breakdown of religious unity and the spread of the Protestant Reformation, the discoveries of the physical and astronomical sciences, the emergence of a new individualistic and rationalist mentality etc. On the other hand, in their genetic and developmental process, rights reflect the legacy of various cultural and philosophical currents such as Renaissance humanism, modern natural law, Enlightenment philosophy, political liberalism, democratic and socialist thought etc., which, from the "transition to modernity" up to the present day, have favoured the valorisation of the human being as an autonomous individual.[40] [2] As a result of these structural constraints, contemporary constitutions, especially in their substantial sections in which they recognise a heterogeneous and conflictual set of constitutional rights, principles, and interests, always presuppose an unavoidable theoretical-doctrinal background to which a certain internal coherence of the text is due. This aspect does not imply at all denial of the possibility of collisions between rights, tragic dilemmas, profound interpretative disagreements, trade-offs, or hard cases within a given legal system. On the contrary, this thesis is absolutely compatible with the recognition of the inevitability of these phenomena (and the correlative need to resort to appropriate decision-making strategies to resolve them). Finally, it is also logically independent of the problem, of a philosophical-political nature, of whether the task of managing it should be up to the judge or the legislator. [3] If fundamental rights are in some certain sense specifications (progressive determinations, concretisations of the content) of the rights advocated by the background ethical-political doctrines, a moral reading of the constitution tends to restore a pluralist framework according to which the constitutional provisions, generally formulated in an abstract and generic manner, necessarily express indeterminate principles. [4] These systematisation operations are strongly influenced by various elements of an intra- and extra-textual nature (interests, intentions, preferences, "pre-theoretical" intuitions etc.). The meaning of words and legal statements, which are considered prescriptive linguistic acts, is largely determined by the "*context of interpretation*"[41] and by the social interaction between the subjects called to participate in discursive, argumentative, and communicative practices.

Even in the legal field, naturally, the problem of determining the perimeter of the contents that must be considered to interpret the constitutional provisions attributing fundamental rights arises. Furthermore, the need to explain the reasoning processes that lead judges to make correct or justified decisions (provisionally considered) in matters of rights is also established. A risk inherent in any pragmatist or contextualist approach

[40] This approach is typically defended by Gregorio Peces-Barba Martínez (see in particular 1986-1987) in most of his writings dedicated to the topic of fundamental rights.
[41] Cf., for this notion, Cappelen (2009).

consists of being merely able to give an *ex-post* account of what happens in argumentative practice, assigning an ultimately infallible role to the tradition consolidated over time and to the social interaction within the legal community, concerning what can be considered, depending on the circumstances, as correct constitutional provisions conferring rights.

In a semiotic perspective that regards legal cases as sign functions and that highlights the relevance exercised by the *contextual dependence of the meaning* (of the legal propositions), the intrinsic limitations that characterise the informational content available to interpreters emerge in the selection of legal material. The problem of identifying boundaries in the selection of relevant legal material can be solved by referring, in the elaboration of an inference theory, not to the entire belief system of the legal agents but more modestly to that part of beliefs considered relevant in the particular context of reference.

According to this perspective, our initial moral judgments toward which we have greater confidence require comparison with general principles, if not outright with a complete moral theory capable of explaining them. This opens up the possibility for revising our initial judgments, depending on the extent to which we can "adapt" such judgments to more general principles. This process of continuous reformulation of content tends to produce, as a result, a situation of provisional equilibrium in which immediate intuitions and moral principles balance each other. This stage will then be followed by a phase of instability that precedes a further equilibrium, and so on *ad infinitum.*[42]

Just as there are no guarantees in the field of moral choices that our projections for the future will not clash with recalcitrant experiences, forcing us to revise or subvert the relevant concepts underlying our reasoning, in the same way, in the field of legal interpretation, judicial decisions do not follow a universally binding rule, pre-established at the judgment and applicable to all future cases with similar characteristics. Since courts cannot deal with legal disputes by applying a previously established specific rule of hierarchy, only being able to intervene on the basis of concrete circumstances, it is reasonable to speak of rules of conduct that cannot be peremptorily applied in future cases. It is logically possible for a universal criterion for resolving antinomies to be followed within a given legal decision, but it does not appear sensible, due to our inevitable limitation of knowledge, to exclude in principle the possibility of revising such a reasoning.

In the process of interpretation-application of law, judges are not faced with external "objects" independent of their personal observations[43]; rather, they tend to

[42] For the Rawlsian conception of *reflective equilibrium*, cf. Rawls (1971: 19-21). The relevance of this insight for legal theory is also highlighted by Maniaci (2008); Celano (2013: 101-102).

[43] On the topic of the non-uniqueness and non-objectivity of legal interpretation (the criteria for identifying/applying the law and determining its validity strictly depend on argumentative processes and reasoning practices aimed at attributing meaning to regulatory propositions), please refer in particular to MacCormick (1978); Aarnio, Alexy, Peczenik (1981); Dworkin (1986); Aarnio (1987); Gadamer (2004).

interpret the provisions based on an internal comparison with the substantive dimension of the constitutional text, being influenced, among other things, by their own immediate moral intuitions, the "cultural crystallizations" that have sedimented outside to the legal text (Häberle 2001: 33), and the general ethical principles of the legal culture of reference. The transition from the provisions selected by the judge to the rules can be conceived as a fundamentally entropic process of interdependence and interaction between the interpreters and the available normative materials (judicial precedents, paradigmatic cases, para-normative acts etc.). Based on a necessarily finite set of previously selected information and interpretative strategies, judges may arrive only at a provisional decision, deemed correct all things considered, and often guided by substantive assumptions of practical reasonableness.

7. Concluding Remarks

In this paper, I have attempted to assemble an adequate analytical toolkit to understand the influence exerted by elements of an intra- and extra-textual nature on the constitutional interpretation of rights. Most notably, in contrast with a linear conception of the inferential chain, I defended the superiority of a "encyclopaedic instructional semantic model" as a paradigm for constitutional interpretation, and tried to indicate a solution to the problem of circularity and potential conservatism of argumentative practices. Finally, I identified another considerable parallel between the role played by the so-called "semiotic habits" and the criteria for stabilising meaning in the legal-constitutional field.

To wrap up the paper, I summarise here the main theoretical acquisitions achieved by this analysis. The constitution is a body of meaning endowed with its own wholeness, although constitutively open to multiple interpretations: a set of propositions or statements that tend to be mutually supportive – the interpretation of which is constantly renewed. The textual corpus, according to this perspective, contributes to determining the meaning of the individual statements: each of these parts is strictly connected to the others and to the whole constitution itself, fitting together within the dynamism of a legal-interpretative practice. By virtue of its characteristics, the interpretation of constitutional provisions that recognise fundamental rights presents itself as an activity guided by a certain degree of pre-understanding regarding their content. Assuming that coherence relations are symmetric, it seems possible to avoid that propensity towards circularity and conservatism that represents a problem constantly found in coherentist theories. The identification of the substantive conceptions of public good underlying the relationships between rights consists in an operation of an interpretative and reconstructive nature – a work of reformulation and readjustment of the peculiar set of statements that is the constitutional text. Different standards of legal justification of rights utilised in decision-making depend on contextual and, therefore, contingent factors. Equally, more or less established domestic linguistic customs, along with their progressive adaptation to the different enunciative circumstances, have a significant impact on determining the standards of correctness of interpretative decisions.

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