Preface

This book’s title could be read in everyday language as: ‘Talking about law produces meanings’. Indeed, a legal conversation does not take place in a courtroom, a law office or a parliament. That takes place in family circles, among friends, in parks or during holiday trips and seldom has ‘law’ as its major theme. The multiple characters of the participants and their strong ties to everyday life situations withstand a qualification for law office or court, where ‘everyone is equal in the eyes of the law’. The translation of the concept ‘conversation’ is therefore: ‘talking’ and in particular ‘about law’. That reference to law broadens the field of legal semiotics. It looks very normal and even easy to do: talking about law seems one of our daily activities, and such conversations are most often solely at the borderlines of conversations on law.

But how do we know precisely? We read papers, listen to friends, listen to what is said on the train or on the street and we witness people discussing legal issues. But are they talking about law, or talking law, or using law as a metaphor? Are they perhaps confirming law or just creating distance from law’s general impact – or are they in essence talking politics while talking about legal issues? They perform speech acts, discuss new laws or protest against legal rules and debate the effects of their application. All those activities lead us straightforwardly to the book’s title: what signifying effect has talking about law? We focus on a specific part of that theme: what is the relevance of a legal conversation that does not occur within the boundaries of the profession? The question challenges our understanding of a variety of elements that constitute law and its many meanings to discover, unveil or critically discuss. Only on that basis can further research on law as a subject of social debate and its inherent signifying power take place.

The book’s focus on ‘talking about law’ on the street and other public places illustrates in what regards legal theory and philosophy of law hitherto did not perform sufficient research. There are nevertheless important themes at stake: the gap between daily and legal language, its many consequences for understanding law and the fulfillment of legal practice, the implied thought pattern of casuistry and causality, law’s language creating facts, absolutisms in legal practice and jurisprudence,
the specificities of legal discourse, law as embedded in master-narratives – including the differentiation between pre-linguistic, linguistic and post-linguistic master-narratives.

‘Thoughts Backing Speech’, the first chapter, underlines that law depends on specific speech activities. One cannot say anything at random in law and about written laws. That is not only the case in law and a lawyer’s profession, but it reigns also at peripheries of legal discourse, in a conversation on the street or other public spaces. However, legal meaning-making, which does not take place within the profession, is difficult to trace. That does not take away how our understanding of law is determined by what is talked about, accepted or rejected, thought or neglected beyond the domain of law institutionally declared valid.

Thoughts that back this type of speech confront us with major components of law’s discourse such as our evidence of thinking and judging when we discuss law in public. They regard interactivity and interaction as constitutive in law practices. What unfolds outside the legal profession is often linked to concepts such as ‘nature’ and ‘natural’. ‘Legal consciousness’ is therefore intensively reconsidered. The sign character of laws and their meaning reintroduce the semiotic relevance of human expressivity, of our understanding the multilingual character of reality in law, and of the basics of human rights – altogether issues that constitute every legal conversation anywhere.

The second chapter develops perspectives on legal practice and concentrates on three major subjects: the citizen’s mindset, the structures of law’s practice and its discourse embedded in a master-narrative. Tendencies in modern law focus on the mind of a rule-following citizen in parallel with activities resulting from modern brain research and therefore not as an issue of morality. Law’s practice becomes in that light a special form of brain stalking. The structure of legal practice depends today more than ever on the case and its speech character. That is highlighted in the frame of e-communication, the many uses of smart phones on the street and of the cyber-story as its recent history. Legal discourse is, not unlike all professional discourses, embedded in a master-narrative. Features of that narrative are anchored in a post-modern mentality. A comparison of three narratives delivers insight in often-conflicting attitudes, which stem from one discourse that engenders in more than one signifying narrative.

Law is generally understood as a harmonious and concordant discourse. At levels of language, social sciences, legal theory and jurisprudence an opposite viewpoint will be developed. All those levels mark one specific center of interest in law: its requirement of obedience. To obey the law is not a simple affair: law changes quickly in modern times and is
varied in its past; it requires a specific mentality and brings special types
of conversation to the fore, which differ in accordance with the place
they take, either in law’s institutional boundaries or outside them. The
well-known slogan ‘law without State’ is discussed in this context since it
profiles the ‘talking about law’ on the street and marks semiotic
perspectives on legal meaning at the same time. The theme ‘law and
conflict’ is often debated and closely connected to the slogan, and
emphasizes the central role of harmony in law and life. That role also
underlines the urgency to determine the place of conflict in law as
understood at a distance to ethical viewpoints and traditions.

The earlier underlined constitutive power of a master-narrative sug-
uggests an obedience to law that reaches beyond traditional ethical motiv-
ation although it remains classified as a verbal, linguistic master-
narrative. The archeologist Bednarik’s 1993 introduction of the cupules
implies that non-verbal master-narratives also exist, which could be
qualified as pre-linguistic. But imagine computers hacking computers to
obtain data, which must be provided to still other computers of which
nobody can know whether these will hack again others – no matter
where, and nobody knows where they are located on the globe. Are such
events an act of terrorism or do they indicate a new obedience enforced
by a post-linguistic master-narrative in which the concept of property has
fundamentally changed?

The book finally returns to ‘the street’ as component and localization
of all ‘talking about law’. Democracy and citizens met on the street in
Ancient Greece’s fifth century BC, and we still know names of those
streets and occurrences connected with them. The God Hermes played a
central role. Modern times experienced the street as a composite of
literary nature before the concept was again closely connected with
citizenship, public meaning formation and the scale of public policy.
Indeed, there is no ‘talking about law’ that is not closely connected with
the street, its local and cultural dimensions, as walks on the streets of
Athens, Paris and New York unveil. The entire text invites you to join that
walk. We thank Mr. Ben Booth, Edward Elgar’s Senior Editor, for his
challenging invitation and support to bring this unconventional guide to
readers who like the walking and cherish the talking about law in the
meantime.

Jan M. Broekman
Frank Fleerackers