

1. Rethinking speech

The story of mankind is told by man—there are no other storytellers and thus no other masters of a language. The stories told are lingual phenomena. Language appears as the term for an artifice: linguistic activity can be forthcoming as if by nature, but the idea of language itself is a term that hails from the language for which that term is meant to be practiced. It might be one of the first artificial terms, before words such as man, woman, or child came to mind as words and not as just utterances for unnamed existences.

Even the Ancient Greeks knew how fate and fortune are brought into relation with language and powerful discourses loaded with a frantic explanatory energy to endure the many courses of events in life. Their goddess Tyche lived a public life among them.

But types of events named “life” remain discourses, which are fine-tuned instruments composed by elements of language. Their structures are laid down in commands (like grammar) and practice-driven rules (like syntax). All vary with the cultural asymptotes that enable us to articulate. And thus, we take it for granted to enter discourses in view of them. *Chance*, as represented by Tyche, plays a dominant role in all achievements. The latter characterized the Ancient Greek reality as well as our reality today—in particular while what we call reality remains evoked as a most natural component of life.

1.1 THE ORDER OF WORDS

Rethinking the “law-and-language” theme is complex. The “law-and-language” relation is generally regarded as a matter of law, whereas the “language-and-law” theme is mainly understood as a matter of language. The order of words appears in this case to forcefully determine our thoughts (and those of others with us, as well as those before us). One could even create a specific dictionary that functions in each of the two approaches. And this is further complicated by the fact that the two exist under one roof—a philosophically broadly designed roof involving on the one hand such fundamental issues as logic, metaphysics, ontology, or

sociability and on the other what is traditionally understood as a philosophy of language and a legal philosophy, or a philosophy of law.

So, someone looking around to find an image that could guide a rethinking of the theme might feel as if they are in a planetarium and thus obliged to choose a stellar constellation in order to orientate themselves. Indeed, “orient” might be a well-chosen word to indicate where a rethinking should find a footing. Where the sun rises, clarity unfolds. In other words: a rethinking depends on clarity, which is inherent to the order of words and the meaning-making power of thought patterns based on that order. Neither law nor language forms an exception to that rule. On the contrary: both depend on the order of words, which is explicated by the syntax of the language in which law is expressed and language studied.

All those considerations have a specific feature to respect: law’s language is not identical to the language spoken in everyday situations. That distance characterizes law in the context of all so-called natural languages. There is not one language on the globe in which the language of law and everyday language are completely identical. It is precisely this gap between the two types of language that forms a basis for protests against legal decisions, laws, or sociopolitical patterns guiding major aspects of life. The consequence is remarkable: the issue of that difference forms an important theme in an analysis or a philosophy of law and legal practice within studies of the linguistic nature of law. But it is rarely found as a debatable issue *in law!* Consider the English language as used in legal writing and thought formation. It is understood as an “artificial language,” because legal English differs from ordinary language—it does so in vocabulary, morphology, syntax, semantics, and rhetoric, as well as in other linguistic features. The abovementioned “order of words” differs in both domains within one language, named the English language. It seems correct that legal thinking and writing refers to archaic articulations when law and legal thought patterns are activated by means of sets of specific utterances. Several key expressions in law have to be analyzed and their history to be recapitulated as if they were exotic parts of a contemporary language and society that date from the sixteenth or seventeenth centuries. Remember the influence of Roman law in all European legal domains, an influence that is in effect even in our current century. For instance, the Roman tradition of painstakingly precisely focusing on the “letter of the law” is still considered a merit of a lawyer’s activity. But in daily life that attitude seems erroneous, psychologically deviant or simply outlandish. Yet, lawyers strive to define and thus to master the everyday life—the so-called natural language—because they experience their own artificial language as anchored in that

naturalness of language: one cannot imagine one hour of legal education in a strictly defined legal language! Consider furthermore how in a majority of countries the national language, and other national signs such as the nation's flag, the national anthem, and the like, are legally defined—indeed, even the national flag and the national language are legally defined! Colors are a legally defined component of a national identity, so why should words and word orders not be in the same position?

1.2 TOPICS TO RETHINK

This suggestion reminds us that a rethinking of the “law–language” theme is not one of a traditional list of topics to consider. In other, more philosophically oriented words: the rethinking is not the activity of an “I” (grammatically spoken: a first person singular) that positions itself before a “You” (grammatically spoken: a second person singular). In everyday language, one should consider that the rethinking is more than a continuous confrontation of a subject with one or more objects. Subject as well as object is, in rethinking, mostly plural and often the result of a historical profiling that differs along with its specific epoch. And what is more fascinating: rethinking is a *process* in which thinking and thoughts may take up unforeseeable positions at indeterminable moments. The main difficulty of any mentioning of “topics to rethink” is therefore its character, in which no fixed positions are efficacious and no themes a fixed entity. Any rethinking activity with regard to the issue at hand should become a matter of *participation* instead of *submission* to an analytical eye. That participation is in its turn a position to understand *implications*. Consider for instance in how many ways law is implied in language, or language in law. Try to become aware of how linguistic frameworks construct barriers for legal utterances or how a language of consent among friends can destroy a legally correct interpretation. These are only a few quite simple and unspecified interlocking issues as an example to help understand that there is not simply a list of “topics to rethink” in the law–language relationship.

Apart from the fact that the law–language relationship is a process rather than a long list of topics, one must take into account that this relation is multidimensional and unlimited. In other words: its topics are everywhere and always have some actuality. That is the case in law as a discourse governed by word orders, structured sentences, and other linguistic means to order social behaviors. It is also the case in language as a discourse, in which such a governing and structuring happens at a

specific level of law's artificiality of language. But language normally unfolds a reflection that opens up to a freefloating level at a distance from the first—a level that would be unacceptable in law. The encompassing power and space of law (its language implied) is limited, once one compares it with the power of language. That incongruence is important in the law–language relationship and forms a continuous problem for the legal practitioner. Its experience is a key to a deep understanding of the law–language relation as a component of culture in general. All complexities of the theme's topics are caused by the fact that rethinking any form of a law–language or language–law relationship is ultimately a form of rethinking an extremely broad and deep-layered segment of culture.

A *list of topics* reining the law–language or language–law relation is ultimately a list of *cultural* issues. The law–language–law list in its completeness is a phantasm of our culture and as such an important sign of the limits which any student of the theme will experience. Rethinking the theme is by no means a matter of completing a list of issues. The “list character” of issues to rethink is one of the issues to rethink in itself: why would one, in view of such a cultural complexity, complete a list? Is that listing not a construction that exactly contrasts what should be rethought? And: should such a list not be acceptable only under the condition that the components of the list are genuinely derived from the definition of the subject to be rethought? But neither “law” nor “language” are to define: the impossibility of precisely defining law has irritated lawyers and legal theoreticians across the ages, whereas the same feature of language has been accepted by archeologists, anthropologists, and linguists. The difference is tangible and even inspires street protests, forms of activism, and political movements. They find a common interest to underline that where law is indefinable, nobody possesses the power to work with arguments which are in conflict with democratic measures and viewpoints in multicultural contexts, in international economics, or in global politics. The indefinable character of law and language has many, and many different, sociopolitical—and even philosophical—consequences. Among the latter is the impossibility of a list of issues to rethink, because rethinking the “law-and-language” theme is a *cultural activity* long before it can be understood as the management of thought patterns by sociological, linguistic, or philosophical specialists.

If we were to ask a lawyer to make a list of issues to rethink in the context of the “law–language–law” relation, he would in the first place provide terms and topics that belong to professional execution, which has to be mastered daily. That attitude would bring concepts to the fore which several of his colleagues would describe as “legal theory.” They

would do so because they focus on the composition of what in daily legal work are axial concepts: for instance, an equilibrium that represents a notion of justice, terms associated with a most general execution of liability in its legal sense, words needed in a cognitive structuring in legislative provisions, their acceptance of linguistic expressions as building blocks for legal discourse, the ability to master ideological exchanges in court sessions, specificities of forensic linguistics, or the acceptability of social media in forensic discourse analyses.

Indeed, if topics to rethink the law–language–law theme are *topics*, they are all embedded in the fabric of language itself! Some who read this assertion will agree; others might consider it a conclusion that proves how fundamental and unavoidable the naturalness of the phenomenon called “language” is. However, both perspectives illustrate that law is definitely a linguistic phenomenon and language the sphere of creating law. Be aware that multiple types of language existed long before types of law were codified. Legal consciousness is, in other words, not possible without language—but law is a rather late product of a linguistically sophisticated mind. If the law-and-language theme is indeed a cultural phenomenon to be continuously rethought in terms of language, it is certainly an element of a philosophy of culture, which takes seriously human history as well as archeology and anthropology. These considerations are not only meant to underline the all-embracing power of language despite the difficulty or even impossibility of defining it. It is in the long, complicated, and in certain periods of culture (remember again the Roman law period as an outstanding example) very successful growth of law in the realm of also richly expanding linguistic expressiveness that *mutual* relations between law and language are established.

1.3 WAVES LITERALLY EXPERIENCED

Those remarks not only guide a rethinking process concerning these relations, but also lead to an extremely interesting view on the literacy of law in its process character. The confrontation and even coalescence of various domains that embrace waves of legal meaning that are ultimately becoming strict valid legal utterances is a matter of mastering language. Law’s practices are from a linguistic point of view always an *application in plural* and always a striving for the perfection of language *tout court*. That aspiration embraces various stages, giving rise to waves.

We distinguish various stages of literacy, which will be important in the multiple positions of a “law–language–law” rethinking. The first stage is named the “preliterate stage” and the second the “literate stage,”

in which three different phases are distinguishable: a “transition” phase, a “literate-formal” (or “langue”) phase, and a “literate-speech” (or “parole”) phase.¹ The third stage is the “postliterate stage” in which the diversity of forms and techniques of literacy in law will be distinguished, the absoluteness of the position of a text in law will be put in perspective, and the diversity of all consequences in view of the digital language beyond the concept “cyber law” will be mentioned.

One conclusion is far reaching: the variety demonstrated in the multiple phases of development is more influential for law than any possibility to construe a list of topics that characterize the “law–language–law” theme. Apart from the possible influence of a specific phase of its development, language (no matter whether natural or specifically legal) does indeed mark its omnipotent dynamic character most prominently. It will change its character in varying periods of culture so that its share in construing law must also be understood in terms of dynamics. That is beyond any evidence. The principle of dynamics is in effect where features of various periods appear to be interwoven in one and the same legal case, in legal law, or in a corresponding jurisprudential issue. Language is and can indeed always be fluid and dynamic—as the expression “do you understand me?” in everyday language makes clear. Law may seldom be in the position to meet with this requirement. “Do you understand me?” is perhaps a phrase used by a lawyer in conversation with his client, but will not be accepted in a court session. Legally valid laws are to follow and not to debate; laws lack the dynamics of meaning management in more than one regard. If we knew the reason for that inept attitude, we would ultimately be able to correctly define law—a task that has never been accomplished in the period since legal stars such as Solon in Ancient Greece or those in other cultures who lived before him failed to do so!

It is fascinating that this difference between a natural and a legal language seems to be effective in personal conversations. Legal language appears to embrace less freedom to move, act, and determine its meanings than everyday language. But when I speak, I do also always speak law! Many legal concepts, terms, thought patterns, and the like are cultivated, used, selected, or simply surviving in the language I speak. Most of them are just left there; others were adapted by our daily languages; still others, albeit fewer, found a home in the lawyer’s

¹ For the distinction between *langue* and *parole* see F. de Saussure: *Cours de linguistique generale*, Payot, Paris 1972; Engl. ed. *Course in General Linguistics*, trans. R. Harris, Open Court, Illinois 2007 [17 ed.], pp. 31 f., 37 f., 172 f.

professional language. Law and legal language are solely a fragment, a part of a wider domain, and more dependent upon the “speech/parole” features of language than—as lawyers would emphasize—upon the “langue/grammar” features. Waves of language and meaning heard and debated in high tides of speech will flow out in fixed curves to grammarians once constructed. Legal language often strives to become and be a beacon of stability of meaning and expressivity amid our constant changes of language as an element of general culture. To acquire clarity from this complexity of cultural changes, one role of language in literature and another in law are illustrated by two examples to suggest some insights into the meaning of change in language.

1.3.1 Poetic Language

A first example lies in the clear and powerful, even revolutionary, attempts to change *poetic language* approximately a century ago. They took place in the 1920s and 1930s in large linguistic domains such as the French, German, and English daily languages and their literature. Shortly after the high tides of Cubism, poetry also sought to change and improve the effects of perspective. It is true that new views on the particle in painting, as for instance became clear in Cezanne’s canvasses in the early stages of Cubist painting and thought, were developed in a broader frame of thought and in conversational practices. A work of art, we underline, establishes relations among different worlds and is always echoed in different discourses.² In particular, poetry should accentuate its dynamic character through a new directness of expression and offer its power of change at many of the complicated levels of life. The way in which life is a process itself cannot solely be expressed through suggesting beauty in words. This means the typical features of poetry, and in particular the unique characteristics of a poet’s language, unfold amid tensions between the social and the individual spheres of life.

The famous psychologist Henri Delacroix claimed in 1924 that language is the human expression originating in the totality of the human being. He underlined that language is a product of the human mind. Human language is for him rooted in the primal human hymn in which thoughts and sounds are reunited.³ All human language is a *sign*, an *instrument*, and not just the *shell* of what just has been accommodated.

² Jan M. Broekman: *Meaning, Narrativity and the Real*, Springer, Basel 2017, pp. 178–207.

³ Henri Delacroix: *Le langage et la pensée*, Felix Alcan, Paris 1924.

Poets and lawyers share the desire to fight the opaque and incomprehensible and to create forms of articulation. Their wish expresses a basic feature of language, which is the intertwining of an individual's freedom and the fully respected otherness of the other. So, what is the inner affluence of the poet in comparison to the lawyer? The poet, one could say, explores all possible modifications of linguistic expressiveness to prepare for a future liberated, enriched emotional and psychosocial life. The abolition of truisms, of processed blocks, or the creation of an understanding beyond cliché, is a poet's primary task. The lawyer's language illustrates, in contrast to the language of the poet, how his profession is enchained in a careful application of the cliché, making the latter a fixed rhetoric which functions in society as a cultural artifice. In poetry any individual pathos can express itself in language as an all-embracing property named "culture." An individual pathos in law is confronted with the task of evaporating as correctly as possible into the all-embracing fixation that bears the expression "law" as its name. It is fascinating how this differentiation influenced the modern history of literature. Very different twentieth century authors such as James Joyce or Thomas Mann represented a renewal and restatement of the artist's profile in language. They made accessible poetry like that of Hans Arp, Kurt Schwitters, or André Breton. This poetry is a new power despite its poetic form being based on a fragile individualism. Human language was at this stage becoming a sign of individuality articulated in a firm grip on historic processes by means of a *parallel* linguistic expressivity. The word became positioned as a parallel to history: word and subjectivity, object and subject, individual and society formed an orchestra with a multitude of linguistic instruments. James Joyce guided those who had begun to understand. The fixed power and authority of grammar, syntax, orthography is broken down (Joyce) by means of free and joyful deformations of words, exorbitant associations, images of the human mind repeated in pages of text without punctuation; by streams of consciousness made concretely accessible beyond the boundaries of one specific language (Pound). Static moments of language became dynamic through the addition of senses—ears became vital instruments in reading, as the many experiments in hearing conducted by James Joyce proved. The waves of renewal pertaining to language and its forms of poetry or literature broadened the modern individual's capacity to experience the wealth of culture.

1.3.2 Legal Language

A *second* example of our consciousness of the wave character of language and culture has its roots in the first example, which generated the question: did the language of law display any changes influenced by the renewals in poetic language? Are there, in other words, changes in the literary forms that directly constitute legal language? There are such changes, indeed, but it is sometimes difficult to trace them!

Our rethinking about waves of literacy in Western culture goes to the heart of legal thought formation during the twentieth century. H.L.A. Hart's *The Concept of Law* was published midway through that century. It guided legal thinking as well as law's practices for the rest of that century and has reached far beyond the boundaries of the English language and the common law system since. The wave, its shock effects, and the change in literary style which it brought about are immediately visible in the first edition of *The Concept of Law*, from 1961. The title and the first line of the fifth chapter are harsh and offer details about the height of the wave as well as the impact of the changes concerned.

The following issues are mentioned in those first lines:

1. The chapter's subtitle is "A Fresh Start"—what does it mean to be confronted by "a fresh start" in the middle of a book, after 75 pages?
2. The title of chapter 5 ventures for the first time to consider "law as the union of primary and secondary rules"; the author thus reaches out to an age-old debated issue, namely, the indefinable character of law. What does this mean?
3. At issue are thus the failures of the traditional view on "law as the sovereign's coercive orders." Renewals in poetry are fruitful for literature in general; renewals of our conceptualizations of law are fruitful for society in general. The answer to our questions concerning the meaning of a fresh start and a new appeal to the definition of law is proposed: sovereignty is exchanged for rule(s).
4. Its wave effect is double: it dismisses views on law as reproduced and discussed in preceding chapters and it presents a new form of thought, which is concentrated on the phenomenon of rules. *The Concept of Law* thus changes the vision of law and offers a vision of the *concept* of law. It emphasizes rules, discusses that phenomenon in a direct manner, distinguishes between primary and secondary rules, and researches their articulations and interplays in law and legal practice. The question is not posed whether this new wave also

created a new legal field of articulation and thus a new legal language.⁴

5. Law as such, in its material as well as its immaterial quality, is nevertheless at stake. A new idea of law bursts out like a volcano, an outburst that is rather unexpected and reductive in its focus on rules. That wave, or move, of hidden activism within legal theory is justified by fierce condemnation that “the elements out of which the theory was constructed, viz. the idea of orders, obedience, habits, threats, do not include, and cannot by their combination yield the idea of a rule.” The new subject of conversation characterizing—yes, defining—law is the *rule* “without which we cannot hope to elucidate even the most elementary forms of law.”⁵
6. A parallel with new waves in poetic language becomes visible: the poet was challenged to redefine individualism as a source of vital energy by means of concentrating on new ways of articulation; the lawyer is challenged to redefine individualism as a source for a new understanding of law and its language functioning in society.

1.3.3 Hart and Joyce

All of this has most interesting philosophical implications for the unfolding of the language of law in the twenty-first century and its progressing digitalization. It would be fascinating to read a hitherto unwritten essay: “A comparison between James Joyce and Herbert Hart on rules”! Even the manifest and indisputable differences between literary and legal language would display a strong commonness of vision and understanding of social reality. Joyce’s application of rules by means of extreme freedom from rules, his manner of breaking rules in order to acquire a deeper understanding of reality and our interpretation of the real, mirrors Hart’s necessity of rules in social life. Rules in the view of Hart, their specific forms of obedience included, are ultimately forms of expressivity, linguistic utterances and verbal attempts to prove the deep truth about *law’s* reality.

⁴ The depth of legal realism is hardly unveiled when the Hart–Fuller debate tries to discover a middle way between realism and formalism. The position of the legal *case* in the “legal process school” as a subject of specific thought formation should be emphasized, as Fleerackers proposes in his 2016 *Rechtsdenken–Vademecum*, Part IV, Larcier, Brussels, p. 103.

⁵ H.L.A. Hart: *The Concept of Law*, 1st ed. Clarendon Press, Oxford 1961; 2nd ed. with postscript by P.A. Bulloch & J. Raz, 1994, pp. 79 ff.

Do not forget that meanings created by a rule-governed behavior are, as *legal* meanings, most vulnerable at the level of obedience and compliance. To express them in language does not provide security of any kind.⁶ Legal expressiveness apparently does not guarantee any certainty about behaviors of others, which determine life and the possibilities of behavior. Can rules, even when their types are differentiated, bring freedom? Hart knows this deeply, when he tries to define *law* via the *rule* concept and no longer as a phenomenon of sovereignty and social power. His thoughts focused on the discordant character and indefinable quality of legal discourse. His need to venture the “law is ...” formula is the magic spell that unites his language with Joyce’s, one could say. Both concepts—the concept of literary language and that of legal language—unfold features of reality which we need to embrace for life.

1.4 THE SHINING CRYSTAL

Not only Shakespeare or Yeats, but also many contemporary poets such as Arp, Pound, Schwitters, and others, were fascinated by one or another form of *crystal*. They refer to the combination of two properties of the stone, which were opposed in logic but a source for beauty, enchantment, and even bewitchment in nature. They are *broken, fractured* all over, and yet offer awesome beauty once they are definitively free from any negative connotation caused by their fractures and breaches; they are *shining* and *radiant*. Crystals are minerals that first were a cosmic event, and, remarkably enough, they still *happen*, and thus are never static. Stones, minerals in particular, are by no means symbols of fixed times or unchangeable situations—on the contrary, their hardness gives us times and events, in short, fluidities, in our hands and we thus encounter their history anchored in fluidity. *With change enters beauty into our lives*. Crystals, minerals, shine. They are radiant and attractive; they are sign and symbol at the same time and thus suggest being at home in our poetry rather than in philosophy. In essence, they are a great moment of change in their history, a history that is encompassing the unfolding of human consciousness. The rocks, the crusts of our globe, just like the stones we use for our buildings, once were liquid: they were lava or even water, and did not shine—their temperature was too high for humans and animals to have their history embrace such forms of consciousness. The

⁶ See Jan M. Broekman & F. Fleerackers: *Legal Conversation as Signifier*, Edward Elgar, Cheltenham, UK/Northampton, MA 2017, p. 131.

story they tell now is fascinating and a deep riddle as far as many dimensions are regarded, no matter whether their history was engraved in stone or in ice, no matter whether streams of lava or of water determined the forms in which they would encounter a human mind. A human mind needs energy, dynamics, progress, confrontations, oppositions, and changes all over. Precious stones tell us vibrantly about the history of our selves. The crystal in our hands is a moment of life's unfolding that occurs beyond boundaries. Its unity with our physical body is a surprise for the mind, which thinks in restrictions and abstractions, and embraces the tendency to forget historical aspects of all life. Philosophers rethinking their capacity to talk and tell stories, in short, languages, should listen to stones. They should listen as intensely when they climb mountains as when they watch their ladies wearing crystals and diamonds at dinner parties.

The past and present of the “law-and-language” or “language-and-law” theme are like gems. The impressions we experience in today's light originate in the inaccessible materiality we keep in our hands. Apart from our hands, we conserve these treasures in our memories, our texts, our books and related publications, our computers and smartphones, our clouds filled with virtual properties. When we speak languages, for instance the language of poetry or the language of the law, we share the darkness of their implicit powers and misjudge the dynamics of their fluidity. Our grip on them looks like an act of mastership and power, but it is in reality (reality's reality) a form of participation, a flux, a distancing from the storyteller in order to create space for words and related activities of the mind. Indeed, the theme itself that has to be rethought is like a gem, as modern physics makes clear. Quantum mechanics describe all states of unfolding reality in terms of wave functions. Appreciation of the gem, of the shining crystal that reminds us how reality is continuously unfolding, needs distance from standard texts, libraries, and copies of a past, from handbooks loaded with wisdom adorned with information. The realm of our thoughts appears to be structured like the realm of persons: one needs to constantly concern the presence of the other, or of otherness, even as if it were of stone, rock hard, fossilized in essence. How does one handle those gems in the flow of thoughts and afterthoughts that is normally called “rethinking”—a process that is inexorably anchored in our culture and definitively tied to language?

1.4.1 Spoken Words

Spoken words are perhaps the only crystals that will survive our age of changes in communication and social welfare. Rethinking of axial discourses has become a social necessity and not just one of the many possible scientific approaches within a scholarly domain. Are interests in words moving—moving with our communication techniques and moving in directions that are typical for our Occidental culture in its entirety? Yes, they were and they are.

There is a growing awareness of the fact that our interest in the word of the judge, the poet, the friend, the partner, or the outcry on the street—in short, in *speech*—is not solely an interest in *our* words. They are words of others, words of the day, words of our times, our age, our modernisms, our democracy, our visions and ideologies, our contemporary culture. The dominance of the Speaker–Hearer Model that structurally and humanly constrained the processes of exchanging words seems to fade away. This is one of the most important conclusions of our rethinking process—it will more than once be confronted with that issue, once we are confronted with rethinking speech in law and life. And it underlines the idea that every word has a history in which it was substantially different from how we understand it now.

There was a period in which we said “different from what the Ancient Greeks had in mind,” and meant “in our days.” We wrote or said “what past generations did,” and meant “our modernity.” It might be that we lost substantial parts of any history-oriented type of comparison in our argumentations. What was argued as an equation or even a simile became an act of rethinking. Indeed, also the rethinking shines like a crystal. Are we blinded by its full radiance, so that we are challenged and urged to remember and reconsider what the crystal was before it came in our hands? Is that a plea for a revised *historicism*? It would be interesting to construct a long list of properties that characterize the rethinking concept. But where should we begin? The *flux of narratives* in which every rethinking takes part cannot be neatly indexed. This rather simple observation points at a core issue of the process of rethinking. Spoken words—those of natural as well as artificial languages, conversations as well as narratives, texts as well as virtual messages are clearly determined by a set of heavy, solid, hardware categories, which the grammarians introduced: the person(s) in grammar. But bringing grammatical positions forward will not solve the question pertaining to an outlining of rethinking or even a specific set of positions which determines this process.

1.4.2 Speech

We focus on *speech* as the flagship of verbal and nonverbal language in its adventurous history, which reaches from archeologically uncovered *cupules* to the global use of a *password*. Speech relates to texts, commands, rules in all discourses of natural or artificial nature. Speech is the bridge from legal opinions, judgments, and orders to the flux of everyday occurrences; speech binds law, languages, and philosophy with politics, ethics, and anthropology. Many possible modes of articulation overcome the gaps between social objects on one hand and physical or ideal objects on the other. But the difference of the social and the physical remains of greatest importance and stimulates a globally high appreciation of what words, that is, speech can bring together.

For *speech the flagship* think of Saussure's distinction between *langue*, that is, language as a system of means of expression, a structured system, and *parole*, that is, language as speech. However, it has become clear in the course of the past decades that Saussure's famous and very useful distinction was not able to explain how and why *speech* and *language* became more or less identical. Behind this slowly emerging identification lies the fact that Saussure's explanation of *speech* was too individualistic. He wrote in his widely respected *Cours*: "by distinguishing between the language itself and speech, we distinguish at the same time ... what is social from what is individual," and in the same context:

The language itself is not a function of a speaker. It is the product passively registered by the individual ... Speech, on the contrary, is an individual act of the will and the intelligence, in which one must distinguish: (1) the combinations through which the speaker uses the code provided by the language in order to express his own thought, and (2) the psycho-physical mechanism which enables him to externalize these combinations.

This leads to a more general conclusion within the mentioned context, which reads as a statement: "A language is a repository of sound patterns, and writing in their tangible form."⁷ Today, we do not embrace speech as the exclusive issue for a person or an individual. There exist many reasons for this change of opinion on *langue* and *parole*, especially regarding the understanding and experience of the latter. They all concern the omnipresent power of speech, which is also the motivation for this book's title. That power of speech leads modernity to embrace the idea that the relationship between an individual and its culture, a person and

⁷ Saussure, *Cours de linguistique generale*, p. 31 f., 37 f.

its speech, that is, language, should be understood as a foundational *event* and not as an issue of fixed relations between two equally fixed entities. In other words, language is no longer understood in terms of a duality of persons or grammatically inspired person-positions: language is a matter of culture and of cultural individuals participating. Participating is life. Words are not individual entities: they are all loaded with meanings that are originated elsewhere—not only by speakers, but by all who participate in the flow of changes of meanings that constitute life.

Langue (language) was proposed by Saussure as a structured system, a self-contained whole, as well as a principle of classification ultimately focusing on application. A philosophical rethinking of the law–language relation has to pose the question: where does this system come from? It is not discussed but vaguely determined as the outcome of theories stemming from the human brain. That brain is to Saussure a result of a more encompassing evolution of the cosmos. So far for *langue*, but it is more difficult to decide about the character of *parole* (speech)—“that is to say, it is not clear that our vocal apparatus is made for speaking as our legs for walking.” In other words, it is not clear that the human vocal apparatus is definitively defined as *parole* (speech). What is essential is, however, that “the language we use is a convention, and it makes no difference what exactly the nature of the agreed sign is. The question of the vocal apparatus is thus a secondary one as far as the problem of language is concerned.” So “it is not spoken language which is natural to man, but the faculty of constructing a language, i.e. a system of distinct signs corresponding to distinct ideas.”⁸ The latter remark leads to various possible ways to view the link between *langue* and *parole*, but one can be certain: theirs is different from and more complex than a theory–praxis relationship.

Most pointed is the question whether *langue* and *parole* are clearly distinguishable. If *langue* is based upon “acts of classification” or functions as “a principle of classification,” its construction and articulation is ultimately a matter of an *artificial language*, whereas *parole* is the speaking as another form of articulation. Therefore it is a matter of what is usually called a *natural language*. In the context of this chapter’s thesis, we thus consider *langue* as a matter of *artificial language* and *parole* as a matter of *natural language*, instead of qualifying the two as *theory* and *practice*.

An important critical question remains: in this context, what is the decisive difference between an artificial and a natural language? Saussure

⁸ Ibid, p. 10 f.

formulated in the above quoted passage that “it is not spoken language which is natural to man, but the faculty of constructing a language, i.e. a system of distinct signs corresponding to distinct ideas.” That sentence has a surprising key role in any attempt to answer the critical question. It poses the “faculty of constructing” language as a natural ability of the human mind against the speech, the spoken language as an “act of the will and intelligence of a socialized individual.” It is not the contrast but the differentiation of the two roles that interests here. What was evoked in the opposition between “artificial” and “natural” language is apparently not the contrast between theory and praxis but *the (proactive) ability to construct as a precondition for any ability to perform*. In language, our mind creating artificiality is deemed “natural” and a most general condition for speech, which cannot be without that natural artifice and is never natural as such. All these considerations are kept in mind, if one understands the term “Flagship ‘Speech’.”

A fascinating page of Jean Pierre Vernant’s 1962 publication *Les origines de la pensée grecque* refers to developments in the Ancient Greek *polis* between the eighth and the seventh centuries BCE. Vernant states:

with the *polis*, social life and human relations took on a new form, and the Greeks were fully aware of its originality. The system of *polis* implied, first of all, the extraordinary preeminence of speech over all other instruments of power. This power of speech ... brings to mind the efficacy of words and formulas in certain religious rituals, or the value attributed to the “pronouncements” of the king when he rendered final *themis* (judgment) ... Actually ... speech was no longer the ritual word, the precise formula, but open debate, discussion, argument.⁹

In other words, the Ancient Greek *theoroi* were not theoreticians but those who answered the needs of the *polis* to qualify togetherness in words amid their social actions, that is, through speech.

The Greek example helps us recognize how to appreciate the ties between elements of speech. They seem a millennia-old foundation for society, its public debate, and critical narrative. Semiotics and semioticians should respect the Greek *polis* tradition, enriching social life by rethinking the immeasurable value of speech. This awareness reaches far beyond the repeatedly proclaimed observation that the *seme* was a precursor of the *sign*. Words of speech confirm this in modern manners;

⁹ Jean Pierre Vernant: *Les origines de la pensée grecque*, PUF, Paris 1962; Engl. ed. *The Origins of Greek Thought*, Cornell University Press, Ithaca, NY 1984, p. 49.

they are words on the street—words that are speech, not components of a grammar or syntax.

1.5 RETHINKING THE FLAGSHIP

A confusing number of issues come up as soon as the rethinking of the “flagship” approaches. The ship requires rethinking. It’s not remembering the flagship, although all of us remember its tragic wrecking. It requires rethinking because the ship’s fate—ships often seem to be built for fortunes and fates—is enveloped in endlessly repeated narratives. Thoughts are like ocean currents, the rethinking illustrates. The powers of the deep-sea streams, the depth of their waters, the threats of their icebergs, their greatness as well as their vulnerability are primary concerns.

1.5.1 Rethinking Change Changes

Rethinking a relation of language to a subject that is itself largely dominated by language is a risky adventure on the open sea of sciences and philosophy. Is language not in most treacherous manners like the sea itself: streams more forceful than ideas, deeper than the human mind’s image, unpredictable in its expressivity? Mention the name of the flagship: the name “speech.” In Occidental culture that name has been misunderstood and often misused in the service of political, economic, ethical, and other powers since the days of Ancient Greece, although it is a token that directs our narrations of the tragic story.

Our considerations have accentuated certain perspectives on the grip on reality that characterizes each attempt to rethink a specific subject. Rethinking is always (like all thinking) focusing on issues that were already embedded in culture. Rethinking the absolute newness and uniqueness of an issue is a contradiction in itself. This already opens our eyes in view of the specific subject of our attempts to rethink the “law–language–law” relationship. Even the latest, newest, most precious and courageously designed laws are written in an existing language, within strict boundaries of legal (dogmatic) determination, with references included to legal decisions, cases, or literature from long ago. New motivations, political circumstances, and inspirations can drive legal forces to a renewal of sociopolitical regulations, but their imperative character stems from longstanding traditions. The same is true for language, and in particular for speech. An absolute private expressivity is literally nonsensical: no speaker can express any emotion or insight with

forms of speech unknown to others. What is more: the cultural embedding of the law–language–law theme is by no means specific for the theme but is a general notion that nobody on the globe can deny. It means that no rethinking of the theme, as indicated by the title of this book, can fully command the process of rethinking itself, let alone begin the project while fully mastering all its dimensions. The theme is on “change” rather than on fixed situations. It reevaluates our words, speech, and language when we consider that change in a positive sense. Both the phenomenon to be rethought and the rethinking itself are matters of constant change, of flux, of fluidity, and thus embrace speech as their sole instrument. Speech is, however, the speaking of an individual that cannot speak or articulate solely as an individual. It can speak only in the form of a recapitulation of linguistic utterances that are shared with others, and finally an entire fragment of culture, a social pattern, or a politically described region of the globe. Speech is change; in both processes the other is always present: their mutual relations are difficult to discern.

1.5.2 Rethinking Structured

Rethinking a continuously changing issue is often understood as “criticism.” But it seems necessary to keep rethinking at a distance from critiquing. To criticize is clearly different: the domain of critics is more precise, more fixed, more in terms of alternatives than any rethinking ever will be. What is more, the rethinking subject is more deeply enveloped in the circumstances, issues, developments, fields of expression than a critic. That has to be the case, because rethinking is in the first place a special form of participation and thus at a distance to exclusively proactive patterns. Critical positions belong to that participation; critique does not, but participation is a first goal. Obtaining an understanding of the changes inherent to the subject is the more encompassing goal, and a preferred method of access to the rethought issue. In many regards, one could conclude, rethinking is like a reconstruction of the issue at hand. But it is difficult to describe *what* exactly should be rethought. Is it the well-known visions, the old stories, the traditional viewpoints, which altogether are valuable and truthful but deserve to be rethought and retold? Is rethinking what handbooks have published a special scientific attraction? Or are the breaches, the unexpected changes, alterations, addenda, or renewed insights a source of rethinking? In all these cases a predominant awareness of changed backgrounds and revisited views is a cause in itself: this touches classical opinions as well as their applications. Last but not least, we underline the

general experience that rethinking is never an apolitical process. Rethinking itself is a matter of outlining awareness about constitutive facts and processes, whereas the acceptance and clarification of effects of principles seems crucial to each attempt to rethink. This diversity of considerations leads finally to one crucial question: is rethinking a more or less neutral, strict, value-free, bookish procedure? The answer is a clear *no*.

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