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The Structure of Constitutional Semiotics

Signifiers, Signifieds and the Signification of Constitutional and Constitutionally Relevant Meaning

Constitutional semiotics is entrenched at the point of intersection of constitutional epistemology, constitutional anthropology, constitutional social psychology, socio-legal studies, and general and legal semiotics. It is embedded in studies of memory,[[1]](#footnote-1) visual[[2]](#footnote-2) and emotional politics,[[3]](#footnote-3) and is inspired by semiotic and epistemological studies of text and texture. Thus, it is a phenomenon and field of research allocated at the crossroads between rational, normative-institutional, textual, visual, performative and symbolic-imaginary constitutionalism. It also has important emotional repercussions that are reflected in emotional constitutionalism.

A proper understanding of constitutional semiotics as a theory and a meta-theory should be based on an analysis of the structure of the constitutional semiosis, its determinants and elements, and its impact on the overall concept of constitutionalism. This scientific endeavour also demands a reconceptualisation of constitutionalism. Constitutionalism should be perceived not just as a rational and systematic order and a normative phenomenon entrenched in textuality safeguarded by the state authority; it also has to be conceived as an imaginary reality based on social trust, emotions and psychological perceptions generated through the signification of meaning by recourse to all instruments of semiotic expression and representation of constitutional content.[[4]](#footnote-4) Thus, constitutionalism, perceived as a negotiated multidiscursive legal order justified on the basis of criteria stemming from collective constitutional imaginaries, becomes a necessary and proper object of constitutional semiotics.

Hence, constitutionalism can be intellectually framed as a system or, more appropriately, a range of imaginaries generated in the process of constitutional semiosis. These imaginaries have a divergent ontology and teleology, and somewhat diverse structural and functional characteristics. Thus, they are not always and are frequently not even capable of being framed as a coherent system. But they have one fundamental common feature: they construct constitutionalism as a semiotic process of representation of meaning and thus as a ‘game of collective constitutional imaginaries’. These imaginaries are represented and shared with the constitutionally framed socio-political community textually, visually and performatively.

‘Constitutionalism as a game of imaginaries’ is an advancement in terms of grasping the complexity of constitutionalism as a multidiscursive and composite phenomenon that includes not only the legal order, but also its determinants and imprints in social relations and in the collective imagination and anthropology of the constitutionally framed socio-political community. Hence, constitutionalism conceived as a ‘game of constitutional imaginaries’ is a conceptual bridge, precursor and promoter of ‘constitutionalism beyond rationality’ and ‘constitutionalism beyond positivism’. Again, this should not be understood as an assertion for the detachment of constitutionalism from rationalism as one of its main normative ideologies. Nor this is a claim for the promotion of some kind of ‘constitutionalism without law’. On the contrary, it is rational to assume that the proper understanding of the valid constitutional law as a rationally and textually entrenched phenomenon is to broaden the analytical horizon with the intellectual and socio-legal dimensions of constitutionalism.

Constitutional semiotics seems to be a very appropriate analytical platform for grasping the phenomena of signification of meaning through the expression of constitutional imaginaries via textual, visual and performative constitutionalism, and thus has huge epistemic value. Constitutional semiosis can be a provocative but enlightening process that may serve as a paradigm for exploring the ways for the deconstruction, constitution, reconstruction and finally, for the representation and signification of meaning transported from the system of valid constitutional law in collective constitutional imaginaries and social practices through recourse to the toolkit of textual, visual and performative constitutionalism.

In that regard, constitutionalism can even be conceived as a game of images,[[5]](#footnote-5) performances and textual interpretations, and ultimately as a ‘game of semiotic codes’. This chapter will first outline the main determinants of constitutional semiosis – signifiers, signifieds and the range of signification – before going on to explain why constitutionalism can be metaphorically constructed, imagined and explained as a ‘game of semiotic codes’.

Each semiotic system requires a definition of three main variables serving as determinants of the semiotic process. The theoretical and normative interrelation and the practical interplay between them predetermines the overall design, scope and characteristics of the semiotic system. The conceptual parameters of constitutional semiotics should also be defined on the basis of the joint impact of these three determinants.

The first determinant of the semiotic process is the system of signifiers used in the process of signification.[[6]](#footnote-6) The concept of the constitutional semiotic signifier must not necessarily be an exhaustive or strict one; it is permissible to have descriptive and all-encompassing definitions as well. Such definitions do not determine the scope of signifiers in rigid terms. They do not exclude additional signifiers that may appear in the de facto performance of the semiotic system.

Constitutional semiotic signifiers are tools for the signification and expression of meaning. They are phenomena that are capable of symbolising the objects of their signification in condensed, synthetic and emotionally and imaginary appealing ways. Efficient signifiers must be able to portray the symbolic representation of constitutional and constitutionally relevant meaning. At the same time, they should be capable of producing constitutionally relevant emotions shared in the constitutionally framed socio-political community. And, most importantly, they must be visually appealing to the same community which is also the addressee of the valid constitutional law.

Indeed, not all signifiers may be visually appealing (eg, textual signifiers), but most of them are. This is particularly true for visual and performative signifiers of meaning. It should be noted that the visual and emotional appeal of the constitutional semiotic signifiers is an important quality for their practical efficiency and empirical relevance for the process of constitutional semiosis. Nevertheless, the low capacity and levels of such an appeal does not necessarily deprive the signifier of its overall conceptualisation as a constitutional semiotic signifier; it merely determines its capacity to convey meaning in a way that can enchant the public and have a lasting impact on its collective constitutional imaginaries.

The determination of the constitutional signifiers of meaning depends on the methodological approach to the constitution and constitutionalism. Legal positivism methodologically allows only textual signifiers of meaning. Thus, constitutional semiotics will be limited to textual and normative-institutional constitutionalism, while visual and performative signifiers of constitutional and constitutionally relevant meaning will be excluded. The same is true of legal realism,[[7]](#footnote-7) the only difference being that it broadens the scope of textual constitutionalism with the case law of courts (especially constitutional and supreme courts) and is prone to looking for textual signifiers in judicially created sources of law.[[8]](#footnote-8)

A broader socio-legal approach to the constitution, constitutionalism and constitutional law expands the realm of constitutional semiotics beyond valid law. It may also include within its scope the empirical performance of constitutional phenomena and institutions, and their perception in the individual and collective constitutional imagination and in constitutional anthropology. Hence, the range of constitutional signifiers looks rather different if it is approached from a socio-legal perspective. Depending on the focus of the socio-legal approach which might be more sociologically oriented, or psychologically, anthropologically or culturally inclined and biased, constitutional signifiers can be contained in symbolic-imaginary, visual, performative or even emotional constitutionalism.

If this approach is followed, then signifiers of constitutional and constitutionally relevant meaning may be sought and found among textual codes, symbols and metaphors. They can also be detected in textually expressed forms of symbolic-imaginary constitutionalism with huge signification potential, such as normative ideologies and ideas, constitutional utopias, and constitutional myths and mythologies. Furthermore, visual symbols of constitutional phenomena and the performative representation of constitutional meaning should also be considered as an important part of constitutional semiotics.

Consequently, constitutional semiotic signifiers are all possible bearers of constitutionally relevant meaning that are capable of its synthesis and symbolic representation. Constitutional relevance is predetermined by the methodological approach of the analyst. Thus, it may be limited to valid law and forms of normative-institutional and textual constitutionalism, or may go beyond this traditional restraint of the scope of constitutional relevance.

The second determinant of the semiotic process is the range and scope of signification. The main issue here is the delimitation between the epistemic (cognitive) and the semiotic (symbolic-expressive and denoting) part of the construction, deconstruction and reconstruction of meaning. All forms of representation of meaning contain epistemic and semiotic components. This is a result of the fact that the cognition and signification, understanding or implying of meaning and representation of meaning are intrinsically intertwined but still separate phenomena.

This is the reason why this book is grounded in a mixed epistemological-semiotic approach. Regardless of whether meaning is contained in textual, normative-institutional, visual, performative or symbolic-imaginary constitutionalism, it requires both understanding and expression in a way that combines rational, emotional and imaginary approaches. Furthermore, the deconstruction, construction and reconstruction of meaning can best be achieved through a combination of epistemology and semiotics.

Nevertheless, this book is entitled *Constitutional Semiotics* and not *Constitutional Epistemology*, despite its huge epistemic potential and its wide engagement with issues of constitutional epistemology. The reason for this is that the phenomenon which frames the analysis is the way in which constitutional meaning is expressed, represented and signified by constitutional narrators, visualisers and performers.

Hence, constitutional semiotics is the scientific framing paradigm that generally defines the object and scope of the analysis. Indeed, the broader phenomena explored in this book – namely textual, symbolic-imaginary and visual constitutionalism – are epistemic entities and containers of meaning. However, the book focuses on the modalities and instruments through which this meaning is signified, represented and expressed, and is not preoccupied with the achievement of meaning per se as substantial category and a core of constitutional epistemology.

In summary, constitutional semiotics is explored as a conceptual phenomenon with normative, theoretical, and pragmatic implications. It is defined as a paradigm that is capable of grasping in a coherent and systematic way the process of the signification of meaning in constitutionalism perceived as a multitude of discourses ranging from rational, normative-institutional and textual to visual, performative, emotional and symbolic-imaginary constitutionalism. In that regard, constitutional semiotics is a theory (and a meta-theory) that explores the multidiscursive process of the constitutional signification of meaning (constitutional semiosis) through a range of collective imaginaries expressed via different semiotic tools for signification (constitutional signifiers).

The third and final determinant of the semiotic process is its signification focus consisting of the range and scope of signified objects and targets of representation of meaning – in other words, the range of constitutional signifieds. This element of practical constitutional semiosis, which is a constitutive element of constitutional semiotics as a conceptual paradigm, is again largely dependent on the same methodological concerns and determinants related to the choice of theoretical approach that have already been discussed above in relation to the system of constitutional semiotic signifiers.

To put it another way, the scope of constitutional signifieds, which are detected and determined as forms of constitutional signification, may vary from purely normative-institutional phenomena entrenched in textual constitutionalism to a broader range of objects belonging to the empirical and imaginary reality. In this latter case, the object of signification (the constitutional signified) may be the socio-legal imprints of constitutional institutions and other constitutional phenomena or their projections in the realms of collective constitutional imaginaries and constitutional anthropology.

Hence, from the viewpoint of the latter symbolic-imaginary dimension of constitutionalism, the object of constitutional signification and thus the range of constitutional signifieds is twofold. Constitutional signifieds may either be normative-institutional phenomena belonging to the sphere of valid law or empirical (socio-legal) phenomena. Thus, the signifieds may be part of normative-institutional constitutionalism. Nevertheless, they may also stem from law in action. In this case (when the signifieds are part of law in action), they can be either the imprints of legal institutions on the plain of empirical reality or the durable patterns of behaviour that have gained de facto constitutional approval and constitutional relevance. They may be signified in the realm of collective imaginaries and made available to the individual or collective imagination through significations and signifiers belonging to textual, visual, performative or symbolic-imaginary constitutionalism.

In other words, the constitutionally relevant signifieds may be signified via text, speech, image or performance. Most frequently, constitutional semiosis is accomplished through textual, performative and visual acts, while the semiotic representation of meaning via verbal acts is something of a rarity. This is for two reasons: the volatility and perishability of the verbal act, and its low capacity and ability for the semiotic signification of meaning.

The perspective used in this book is socio-legal in its broadest sense. Consequently, the theory of constitutional semiotics which I am proposing here is socio-legal, extensive and inclusive. This means that, in my view, the range of constitutional signifieds includes phenomena that belong not only to textual but also to symbolic-imaginary, visual and performative constitutionalism.

1. Z Wang, *Memory Politics, Identity and Conflict: Historical Memory as a Variable* (London, Palgrave Macmillan, 2017) 1–126; S Kaasik-Krogerus, L Čeginskas and N Sääskilahti, ‘Politics of Memory and Oblivion: An Introduction to the Special Issue’ (2020) 21(3) *European Politics and Society* 271; P Ricoeur, *La memoire, l’histoire, l’oubli* (Paris, Seuil, 2000); and M Belov and A Abat i Ninet (eds), *Revolution, Transition, Memory, and Oblivion. Reflections on Constitutional Change* (Cheltenham, Edward Elgar, 2020) 1–244. Bottici offers an original ‘politics of the past’; see C Bottici, *Imaginal Politics: Images Beyond Imagination and the Imaginary* (New York, Columbia University Press, 2014) 127-143. [↑](#footnote-ref-1)
2. R Bleiker, *Visual Global Politics* (Abingdon, Routledge, 2018) 1–390; B Hooks, *Art on My Mind: Visual Politics* (New York, The New Press, 1995) 1–240; M McLagan and M McKee (eds), *Sensible Politics: The Visual Culture of Nongovernmental Activism* (Princeton, Zone Books, 2012) 1–664. [↑](#footnote-ref-2)
3. N Demertzis, *Emotions in Politics: The Affect Dimension in Political Tension* (Basingstoke, Palgrave Macmillan, 2013) 1–322; S Ahmed, *The Cultural Politics of Emotion* (Abingdon, Routledge, 2014) 1–276; P Ioanide, *The Emotional Politics of Racism: How Feelings Trump Facts in an Era of Colorblindness* (Stanford, Stanford University Press, 2015) 1–288; and E Kidd White, ‘On Emotions and the Politics of Attention in Judicial Reasoning’ in A Amaya and M Del Mar (eds), *Virtue, Emotion and Imagination in Law and Legal Reasoning* (Oxford, Hart Publishing, 2020) 101–19. [↑](#footnote-ref-3)
4. See A Amaya and M Del Mar (eds), *Virtue, Emotion and Imagination in Law and Legal Reasoning* (Oxford, Hart Publishing, 2020) 1–275. [↑](#footnote-ref-4)
5. On the role of images in law, see A Wagner and W Pencak (eds), *Images in Law* (Farnham, Ashgate, 2006) 1–318; C Spiesel, R Sherwin and N Feigenson, ‘Law in the Age of Images: The Challenge of Visual Literacy’ in A Wagner, T Summerfield and F Benavides Vanegas (eds), *Contemporary Issues of Semiotics of Law* (Oxford, Hart Publishing, 2005) 231–57. [↑](#footnote-ref-5)
6. On the concept of signifiers, signification and signifieds, see F de Saussure, *Course in General Linguistics* (London, Forgotten Books, 2018) 1–260’ C Peirce, *Collected Papers of Charles Sanders Peirce, Volumes I and II: Principles of Philosophy and Elements of Logic* (edited by C Hartshorne and P Weiss) (Cambridge, MA, Belknap Press, 1932) 1–962; C Peirce, *Peirce on Signs: Writings on Semiotic* (edited by J Hoopes) (Chapel Hill, University of North Carolina Press, 1991) 1–294; N Howser and C Kloesel (eds), *The Essential Peirce, Volume 1: Selected Philosophical Writings (1867–1893*) (Bloomington, Indiana University Press, 1992) 1–448; and Peirce Edition Project (ed), *The Essential Peirce, Volume 2: Selected Philosophical Writings, 1893–1913* (Bloomington, Indiana University Press, 1998) 1–624; R Barthes, *Elements of Semiology* (New York, Hill & Wang, 1977) 35–54; D Chandler, *Semiotics: The Basics* (Abingdon, Routledge, 2017) 1–352; T Sebeok, *Signs: An Introduction to Semiotics* (Toronto, University of Toronto Press, 2001) 1–216; T Sebeok, *A Sign is Just a Sign* (Bloomington, Indiana University Press, 1991) 1–170; U Eco, *A Theory of Semiotics* (Bloomington, Indiana University Press, 1978) 1–368; M Bergman, *Peirce’s Philosophy of Communication:* *The Rhetorical Underpinnings of the Theory of Signs* (London, Bloomsbury, 2011) 1–206. [↑](#footnote-ref-6)
7. On the relationship between legal realism and legal semiotics, see M Saltman, ‘Legal Realism in a Cross-cultural Context’ in R Kevelson (ed), *Law and Semiotics*, vol 2 (New York, Plenum Press, 1988) 293–307. [↑](#footnote-ref-7)
8. For more on the structure and process of textual signification of meaning, see D Klinck, *Word of the Law: Approaches to Legal Discourse* (Ottawa, Carleton University Press, 1992) 46–87. For more on the relevance of the choice of sources of law for the semiotic analysis of law, see E Menezes de Carvalho, *Semiotics of International Law: Trade and Translation* (Dordrecht, Springer, 2011) 28–37. [↑](#footnote-ref-8)