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# The Presumption of Common Language as an Interpretive Paradigm and Its Opponents in Polish Legal Theory[2]

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## Abstract

In my paper, I reconstruct Jerzy Wróblewski's theory of interpretation. My goal is to show that this theory has the characteristics of a paradigmatic theory because of the importance of the presumption of common language, which is a fundamental element of this theory. This presumption is decisive in shaping the picture of interpretation and, consequently, gives the theory in question the status of a model theory defining a postulated model of legal interpretation. In the paper, I discuss various aspects of this presumption, highlighting its importance in preserving the principle of universal access to practical (legal) discourse. At the same time, I question the views that challenge this presumption by claiming that the language of law is a code accessible only to a cognitively privileged group of professional lawyers.

**Keywords:** interpretation, presumption of common language, linguistic competence, interpretative paradigm, law text.

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## The concept of the paradigm of legal interpretation

What I mean by interpretive paradigm is an optimisation model of the process of interpretation.[3] In the case of Jerzy Wróblewski's theory, the model of legal interpretation proposed within the framework of this theory has functioned – and continues to function – as a benchmark for the interpretive process, both in the already existing body of judicial decisions and in the current legal practice. This fact makes it legitimate to grant the theory considered the status of a paradigmatic theory.[4]

When speaking of optimisation model, I mean a schematic representation of a specific object that maximises its value. In the case of the interpretive process in question, this maximised value is its rationality. As for interpretation, rationality can be understood: a) as a logically justified sequence of actions of the interpreter, in which action D1 is a prerequisite for action D2 to take place, e.g. the application of 'first-grade' (primary) directives is a prerequisite for the application of 'second--grade' (secondary) preference directives, b) as the justifiability of the outcome of the interpretation, i.e. the interpretive decision, by indicating the rationale behind it, e.g. the interpretive directives applied and the evaluative choices that are associated with the application of these directives.[5] In the case of (a), the rationality of interpretation is the rationality of the interpretive process presented schematically as a sequence of actions of the interpreter – based on a relationship of logical consequence. In the case of (b), the rationality of interpretation is the argumentative justifiability of a given interpretive decision.

In the case of the optimisation model in question (and I consider Jerzy Wróblewski's interpretation theory to be such a model), the maximisation of rationality in the sense of (a) is combined with maximisation of rationality in the sense of (b). This is because the optimisation model of legal interpretation points a logically legitimate sequence of actions that the process of interpretation should involve if the grounds of the interpretive decision that justify it are to be revealed to the

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3 I. Dąmbska, *Dwa studia z teorii naukowego poznania*, Toruń 1962, pp. 21–31; cf. also: J. Wróblewski, *Stosowanie prawa. Model teoretyczny*, "Państwo i Prawo" 1967, 3, p. 375.

4 Th.S. Kuhn, *Struktura rewolucji naukowych*, Warszawa 2001, p. 34 et seq.; idem, *Dwa bieguny*, Warszawa 1983, p. 406 et seq.

5 J. Wróblewski, *Sądowe stosowanie prawa*, Warszawa 1988, pp. 262–268, 393–397; idem, *Rozumienie prawa i jego wykładnia*, Wrocław 1990, pp. 76, 88–93, 108–111; idem, *Dimensions of Legal Rationality*, "Ratio Iuris" 1990, 3, pp. 108–114.

maximum extent. Looking at the optimisation model from such a perspective, cognitive considerations blend with the desire to present certain decision-making processes in a form in which they satisfy as much as possible the values driving the creator of the optimisation model. In the case considered here, this value is rationality, understood as the logical and argumentative legitimacy of the interpretive process. In other words, the optimisation potential of Jerzy Wróblewski's theory of interpretation consists in determining the picture of legal interpretation through the assumption of its rationality. Therefore, the assumption of the rationality of the interpretive process is a fundamental element of the legal interpretation paradigm in question.

The paradigm understood in this way is, in the case at hand, the result of applying the analytical approach to legal interpretation.[6] The analytical approach is about treating legal interpretation as determining the meaning of linguistic statements contained in a legal text. This determination of meaning is carried out through a logical-linguistic analysis of the language of law as a special language used to formulate legal texts. The logical-linguistic analysis of legal interpretation covers also an analysis of the grounds for the legitimacy of interpretive claims.

## Elements of the paradigm of the presumption of common language

### The rationality of the interpreter

The paradigm of legal interpretation in question can be understood as a paradigm of rational interpretive decision.[7] The interpreter is rational if they refer to the reasons/grounds that can justify their interpretive decision. In the case in question, we are dealing with the interpretive directives and judgements used by the interpreter. The interpreter is required to make use of directives common to a number of different normative theories of interpretation. These directives are referred to as "W-interpretive directives" or "common interpretive directives".[8] The set of these directives is presented in each version of Jerzy Wróblewski's theory of interpretation.

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6 Idem, *Metody logiczno-językowe w prawoznawstwie*, [in:] A. Łopatka (ed.), *Metody badania prawa*, Wrocław 1978, pp. 51, 53, 57–60; cf. also: K. Opałek, J. Wróblewski, *Prawo, metodologia, filozofia, teoria prawa*, Warszawa 1991, pp. 263–267; J. Wróblewski, *Analityczne podejście do aksjologii prawa*, "Studia Filozoficzne" 1985, 2–3, pp. 57–64.

7 Idem, *Sądowe*…, pp. 383–393; idem, *Stosowanie prawa*, [in:] W. Lang, J. Wróblewski, S. Zawadzki, *Teoria państwa i prawa*, Warszawa 1986, pp. 484–486; idem, *Rozumienie prawa*…, pp. 95–97, 108–111.

8 J. Wróblewski, *Zagadnienia teorii wykładni prawa ludowego*, Warszawa 1959, pp. 409–418; idem, *Interpretatio secundum, praeter et contra legem*, "Państwo i Prawo" 1961, 4–5, pp. 617, 623; idem, *Wykładnia prawa*,

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These are directives that refer to knowledge of the basic properties of the language of law, the legal system, and the social context in which legal texts are produced and used. The interpreter may not ignore these directives if they wish to remain rational and if they want their interpretive decision to be lawful and legitimate. It is possible to apply other directives if the application of "common interpretive directives" does not make it possible to achieve the level of clarity of a given legal text (in particular, the so-called qualification clarity) that may be necessary for the resolution of a particular case. When the interpreter makes evaluative choices, they should be guided by judgements that are as objective as possible. Such judgements are those that refer to the so-called "intrinsic values of the law". These are the values incorporated by the legislator in the system of the law in force. When ordered hierarchically, they form a system of said "intrinsic values of the law".[9] Referring to these values, a rational interpreter makes systemically relativised judgements that are consistent with the axiological preferences of the legislator. Only a reference to the system of "intrinsic values of the law" makes it possible to arrive at a rational and lawful interpretive decision.[10]

## The assumption of systemicity of law

In the case in question, the assumption of systemicity of law makes ontological sense, i.e. law is assumed to exist in the form of a system of norms and standards.[11] Adopting such a perspective, it is assumed that systemicity is an immanent or mandatory feature of the law and as such, it determines the manner of its existence. Systemicity is not understood in epistemological terms, i.e. as the way in which a cognitive subject – such as an interpreter – perceives or understands the law. It is assumed that in such a legal system, contradictions are only apparent, i.e. they can be resolved through interpretive procedures.[12] The same is true of so-called technical gaps, which are viewed as a kind of apparent contradiction. The limits of the system of law are determined by the concept of systemic validity of a given norm (the LSLE system). This system is complemented by the definition of both formal (LSFC) and

[in:] W. Lang, J. Wróblewski, S. Zawadzki, op. cit., p. 451; cf. also: K. Opałek, J. Wróblewski, *Zagadnienia teorii prawa*, Warszawa 1969, pp. 265–267.

9 J. Wróblewski, *Wartości a decyzja sądowa*, Wrocław 1973, pp. 47–51.

10 Idem, *Sądowe…*, p. 394.

11 Idem, *Zagadnienia teorii prawa…*, p. 254; idem, *Rozumienie prawa…*, pp. 11–14; idem, *System prawa*, [in:] W. Lang, J. Wróblewski, S. Zawadzki, op. cit., pp. 389–390; idem, *Paradygmat dogmatyki prawa a prawoznawstwo*, [in:] S. Wronkowska, M. Zieliński (eds.), *Szkice z teorii prawa i szczegółowych nauk prawnych*, Poznań 1990, p. 34.

12 Idem, *System prawa…*, pp. 401–402; idem, *Zagadnienia teorii prawa…*, pp. 287–288; cf. also: K. Opałek, J. Wróblewski, *Zagadnienia…*, pp. 99–100.

interpretive (LSIC) consequences of statutory (codified) norms.[13] Highlighting the systemicity of the law has to do with interpreting the law as an act of optimisation. From such a perspective, interpretation is a process that maximises the value of the object of interpretation – i.e. the legal text – by maximising its level of systemicity. In the case of the interpretive paradigm in question, the vast majority of interpretive directives serve to maximise the level of the semantic consistency of the language of law (linguistic interpretation), the formal consistency of the legal text (systemic interpretation), and the axiological consistency of the legal text (functional interpretation).

## The process of interpretation of law

Considering interpretation as a rational process assumes that it is a logically ordered sequence of actions taken by the interpreter and involving applying first-grade and second-grade interpretive directives. This sequence of actions aims to establish the meaning of a given norm as a linguistic statement, expressed in the language of law.[14]

The concept of interpretation of law thus defined involves two types of issues: 1) the way of understanding the meaning of a norm, which implies considering the norm (language of the law) in the semantic sphere; 2) the way of understanding the determination of the meaning of a norm, which implies considering the norm (language of the law) in the pragmatic sphere.

Re. 1) In the paradigm in question, the assumption that the meaning of a legal norm in the form of a pattern of the expected behaviour is always, at least to some extent, independent of the interpreter is fundamental to the perception of the interpretive process.[15] Interpretation, therefore, cannot be viewed as a process in which the meaning of a norm is created by the interpreter. This means that the meaning of a norm is always, at least to some degree, determined by the legislator using the language of the law. On the other hand, however, this is not the positivist view of interpretation as a cognitive activity, in which interpretation is a process of searching for "the real meaning of a norm". The rejection of such a view of interpretation is justified by the following reasons: a) the meaning of the norm is always relativised

[13] J. Wróblewski, *Obowiązywanie systemowe i granice dogmatycznego podejścia do systemu prawa*, "Studia Prawno-Ekonomiczne" 1986, 36, pp. 26–30; idem, *System prawa…*, pp. 396–400; cf. also: K. Opałek, J. Wróblewski, *Prawo…*, pp. 241–244; cf. also: J. Wróblewski, *Rozumienie prawa…*, pp. 12–14.

[14] J. Wróblewski, *Wykładnia prawa…*, p. 436; idem, *Rozumienie prawa…*, p. 59; cf. also: K. Opałek, J. Wróblewski, *Prawo…*, pp. 252–253.

[15] J. Wróblewski, *Zagadnienia teorii wykładni…*, pp. 189–191, in particular pp. 408–409; idem, *Rozumienie prawa…*, pp. 52–55; idem, *Wykładnia prawa…*, p. 437; cf. also: K. Opałek, J. Wróblewski, *Zagadnienia…*, p. 266.

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to the language in which the norm is formulated, b) the meaning of the norm is also relativised to the situation in which the norm is used for the legal qualification of a particular case, which is particularly important in the case of operative interpretation, c) the choice of interpretive directives and the way they are applied depends on value judgements, which means that the determination of the meaning of the norm is not axiologically neutral.[16] Item (a) is linked to item (1), i.e. to the understanding of the meaning of the norm, while items (b) and (c) are linked to item (2), i.e. the understanding of the process of determining the meaning of the norm.

In the discussed paradigm of legal interpretation, the legal norm is formulated in the language of the law, which is perceived as a register (variety) of common language.[17] The term "common language" is understood as a language determined by a pattern (canon) of natural ethnic language.[18] Common language understood in this way cannot be equated with dialects or slang used in everyday life.[19]

According to T. Gizbert-Studnicki, language registers take fullest shape in the pragmatic domain.[20] In such a perspective, a register is a language variant used depending on the situation in which the act of speaking takes place. This means that a register is a certain stylistic variant of an ethnic language – a variant such as spoken and written language. The language of the law as a formal stylistic variant of common language is distinguished by a certain lexical distinctiveness seen in some instances of the use of specifically legal terms, such as "herein fail not at your peril".[21] These few instances of lexical distinctiveness, related to the subject areas of individual branches of law, do not legitimise the thesis of the existence of a specifically legal lexis that would be characteristic of the entire subject area of legal regulation.[22] Moreover, the language of the law, as a formal stylistic variant, involves the use of the indicative mode for the formulation of directive statements.

When it comes to the interpretive paradigm in question, the assumption that the abovementioned and other peculiarities of the language of the law as a register of common language do not preclude the possibility of determining the meaning of a legal text by direct understanding – i.e. without interpretation involving the

16 J. Wróblewski, *Paradygmat*…, p. 40; idem, *Problems Related to the One Right Answer Thesis*, "Ratio Iuris", 1989, 2(3), p. 250.

17 K. Opałek, J. Wróblewski, *Prawo*…, p. 149; cf. also: J. Wróblewski, *Rozumienie prawa*…, p. 19.

18 B. Wróblewski, *Język prawny i prawniczy*, Kraków 1948, pp. 113–114; cf. also: J. Wróblewski, *Zagadnienia teorii prawa*…, pp. 236–239; T. Gizbert-Studnicki, *Język prawny z perspektywy socjolingwistycznej*, Kraków 1986, pp. 39–40.

19 A. Choduń, *Słownictwo tekstów aktów prawnych w zasobie leksykalnym współczesnej polszczyzny*, Warszawa 2007, p. 162.

20 T. Gizbert-Studnicki, op. cit., pp. 41 et seq.

21 Ibidem, pp. 56, 61, 94.

22 Ibidem, pp. 75 et seq.

application of interpretive directives – is essential. What is more, in the interpretive paradigm under consideration, there is the assumption that the direct understanding of the language of the law is standard in the practice of using this language in various acts of linguistic communication, especially in the acts involving using this language for the legal qualification of specific facts, which is the case in the application of the law.[23]

In Jerzy Wróblewski's theory of interpretation, "direct understanding" of a text is a concept proposed intuitively, and as such, it can be considered "pre-theoretical" or "pre-analytical."[24] In a situation of direct understanding, it is enough to make use of the directives of the sense of the language of the law, referred to as "direct understanding directives", to determine the meaning of a given norm.[25] These directives are common to both the language of the law and common – everyday – language. These are the directives of the sense of the natural (ethnic) language – Kazimierz Ajdukiewicz's sense directives in a version modified by Jerzy Wróblewski. An aspect worth stressing is that according to both Kazimierz Ajdukiewicz and Jerzy Wróblewski, natural language is an objectified creation that exists largely independently of the actions of the users of that language.[26] Thus, the Ajdukiewicz-Wróblewski semantics cannot be considered an example of "semantic internalism", which assumes that meaning depends on the intentions of language users.[27] On the grounds of the Ajdukiewicz-Wróblewski semantics, meaning is determined by objectified sense directives to which the language user must adhere if they want to behave correctly in their linguistic activity.[28] This is the context in which the idea underlying Jerzy Wróblewski's paradigm of interpretation, according to which the meaning of a norm is always, at least to some extent, independent of the interpreter, should be considered.

It should also be noted that in the case of Jerzy Wróblewski's paradigm of interpretation, the language of the law as a register of common language is consistently viewed as the means of communication used by those involved in the process of

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23 B. Wróblewski, op. cit., p. 162; cf. also: J. Wróblewski, *Zagadnienia teorii prawa*…, p. 115; idem, *Wykładnia prawa*…, p. 436; idem, *Rozumienie prawa*…, pp. 58–59; cf. also: K. Opałek, J. Wróblewski, *Prawo*…, pp. 277, 283.

24 J. Wróblewski, *Rozumienie prawa*…, p. 58.

25 K. Opałek, J. Wróblewski, *Zagadnienia*…, p. 246; cf. also: J. Wróblewski, *Wykładnia prawa*…, p. 437; idem, *Sądowe*…, p. 117.

26 B. Wróblewski, op. cit., p. 38; cf. also: J. Wróblewski, *Zagadnienia teorii prawa*…, pp. 16–20; cf. also: J. Woleński, *Szkoła lwowsko-warszawska a polska teoria prawa*, "Studia Prawnicze" 1986, 3–4, pp. 298–299; idem, *Filozoficzna szkoła lwowsko-warszawska*, Warszawa 1985, p. 192.

27 M. Matczak, *Imperium tekstu*, Warszawa 2019, p. 27.

28 K. Ajdukiewicz, *Język i znaczenie*, [in:] idem, *Język i poznanie*, vol. I, *Wybór pism z lat 1920–1930*, Warszawa 1985, pp. 149–154; cf. also: J. Wróblewski, *Zagadnienia teorii prawa*…, pp. 16–20.

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establishing and enforcing the law. The language of the law is therefore not seen as a way to express the mental states of those who create or apply the law.

Re 2) In the interpretation paradigm in question, the role of the interpreter, including the extent of their freedom to make decisions, is determined by the definition of interpretation, which reads as follows: "In the strict sense, interpretation means determining the meaning of a linguistic phrase when in a particular situation its meaning is vague, unclear."[29] And put slightly differently: "Interpretation of the law in the strict sense consists in determining the meaning of an unclear, vague legal text."[30] This is a pragmatic view of legal interpretation, which means that it is concerned with the existence or non-existence of semantic doubts that may arise in a particular act of using the language of the law.

If we understand interpretation in this way, the concept of clarity or vagueness of the legal text, considered as the existence or non-existence of semantic doubts in the specific acts of use of the language of the law as a means of communication, is crucial. When analysing the clarity of the legal text thus defined, we need to bear in mind that we are dealing with the optimisation model of operative interpretation in the interpretation paradigm in question. Consequently, this paradigm refers to the notion of qualification clarity, which presupposes the existence or absence of semantic uncertainties that may arise in specific acts of using the language of the law to legally qualify certain factual circumstances.[31]

The concept of qualification clarity presupposes that there is no doubt as to whether given factual circumstances do or do not fall within the scope of application of the norm that has been acknowledged as the basis for determining the legal consequences of said circumstances.[32] To put it slightly differently: "The qualification clarity of the law occurs when there is no doubt regarding the inclusion of a certain fact X in the linguistic class A distinguished by a legal rule. In a situation of clarity, X belongs to either the positive or the negative semantic core of the term A."[33] Such an approach to qualification clarity refers to the idea of the language of the law as a fuzzy, vague language in which doubts may arise, as mentioned in the cited definition of legal interpretation. In the paradigm in question, it is implied that we are dealing with language fuzziness when there are terms with fuzzy, vague denotation boundaries existing in a given language. These are terms whose scope (denotation), when examined, reveals the so-called "positive semantic core" (the class of objects that unquestionably belong to the scope of the name), the

[29] Idem, *Pragmatyczna jasność prawa*, "Państwo i Prawo" 1988, 4, p. 5.
[30] Idem, *Rozumienie prawa*…, p. 58.
[31] K. Opałek, J. Wróblewski, *Prawo*…, pp. 253–256.
[32] J. Wróblewski, *Interpretatio extensiva*, "Ruch Prawniczy Ekonomiczny i Socjologiczny" 1965, p. 1, 113.
[33] Idem, *Pragmatyczna jasność*…, p. 9.

negative semantic core (the class of objects that unquestionably do not belong to the scope of the name), and the so-called "semantic shadow" (the class of objects whose 'membership' in the scope of the name cannot be fully determined).[34] In the paradigm of legal interpretation discussed, considering the language of the law as a fuzzy language implies that in such a language, some terms have sharp, clear denotational boundaries, and some terms are vague and fuzzy because examining their scope reveals the so-called "semantic shadow". Therefore, the claim that all legal language terms are characterized by vagueness can be rejected.[35]

The concept of qualification clarity so defined is the basis for distinguishing the so-called situation of isomorphy and situation of interpretation.[36] In the first situation, a direct understanding of the text is sufficient to determine the meaning of a given norm. As I pointed out previously, direct understanding of a text involves the application of sense directives that are common to the language of the law and common language. In other words, these are directives of the sense of the language of the law as a register of common language. In a situation of isomorphy, the use of these directives makes it possible to arrive at a state of qualification clarity, which involves determining whether the factual circumstances under consideration belong to the positive or negative semantic core of the term whose application is to serve as the grounds for the legal qualification being made. This means that in a situation of isomorphy, a direct understanding of the legal text is enough to arrive at a state of qualification clarity. As a result, in a situation of isomorphy, competence in the language of the law as a register of common language is sufficient communication competence to engage in legal discourse.

In the second situation, a direct understanding of the legal text is insufficient and an indirect understanding of the legal text obtained through the application of interpretive directives is necessary to achieve a state of qualification clarity. In this case, linguistic competence in the language of the law as a register of common language is not sufficient communicative competence required to engage in legal discourse. It must include knowledge of interpretive directives and knowledge of the language of the law, the legal system in force, and the functional context to which these directives refer.

What should be stressed here is that according to the theory of interpretation in question, interpretive directives are not semantic directives of the language of

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34 K. Opałek, J. Wróblewski, *Prawo…*, pp. 156 et seq.; cf. also: J. Wróblewski, *Rozumienie prawa…*, p. 31 et seq.; idem, *Nieostrość systemu prawa*, "Studia Prawno-Ekonomiczne", 1983, 31, pp. 9–12.

35 Idem, *Interpretatio extensiva…*, p. 114.

36 Idem, *Wykładnia prawa…*, p. 439; idem, *Sądowe…*, p. 122; idem, *Rozumienie prawa…*, pp. 58–59; idem, *Statutory Interpretation in Poland*, [in:] N. MacCormick, R.S. Summers (eds.), *Interpreting Statutes*, Dartmouth 1991, pp. 258–259.

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the law.[37] In other words, interpretive directives are not treated as rules governing the sense of the new language of the law as a language without the feature of vagueness (hard language). This is a due to the pragmatic view of interpretation, in which interpretation is made on a case-by-case basis and serves to eliminate the vagueness of the language of the law in a particular instance of its use for the legal qualification of particular factual circumstances. Under such assumptions, interpretation cannot be seen as a process of formation of a "hard" legal language.

As I pointed out earlier, in the interpretive paradigm in question, an assumption that considers a situation in which a direct understanding of the legal text is sufficient to achieve a state of qualification clarity (a situation of isomorphy) as typical is crucial. This assumption can be understood as a presumption of pragmatic clarity of the language of the law as a register (variety) of common language. An important thing here is that this is to mean clarity considered in pragmatic terms. This suggests that the same legal text, e.g. "kills with extreme cruelty", may be clear (imprisoning and torturing the victim) in situation S1, and may be unclear (imprisoning the victim and killing the victim after the victim's refusal to marry the perpetrator) in situation S2.

Considering the situation of isomorphy as typical results in viewing the situation of interpretation as belonging to the category of so-called "difficult cases".[38] They can occur for linguistic or extra-linguistic reasons. In the paradigm in question, linguistic reasons in the form of the vagueness of the language of the law are crucial.

I believe that the generally accepted understanding of the vagueness of the language of the law is relevant to the analysis of the basic directive of linguistic interpretation, which is the so-called "presumption of common language". "Without a legitimate reason, the interpreted terms and expressions cannot be assigned a meaning different from that given to them in natural everyday language."[39] When referring to the generally accepted understanding of the vagueness of the language of the law, we can distinguish between radical and moderate variants of deviation from the meaning that the interpreted term has been assigned in everyday – common – language.

In the radical variant, we adopt a broad understanding of "the meaning of a term in common language", which includes both a "positive semantic core" and a "semantic shadow zone" – and which determines the direct understanding of the term being interpreted. In light of such an understanding of the colloquial, common meaning, a radical departure from this meaning would involve including

[37] K. Opałek, J. Wróblewski, *Prawo*…, p. 161.

[38] Ibidem, p. 280; cf. also: J. Wróblewski, *Łatwe i trudne przypadki w orzecznictwie Sądu Najwyższego*, "Studia Prawno-Ekonomiczne" 1989, 42, p. 28.

[39] Idem, *Rozumienie prawa*…, p. 79.

elements belonging to the "negative semantic core" within the scope of the term being interpreted. In the context of the paradigm of legal interpretation in question, such a situation should be treated as an exception and, consequently, the strong rationale justifying the interpreter's action should be considered "a legitimate reason". We can speak of three types of such rationale: a) the legal definition in act A1, which the interpreter can take into account when interpreting the same term appearing in act A2 act – such as the definition of "firearms" provided in Article 5.1 of the act on arms and ammunition, according to which firearms are: "finished or prefabricated essential parts of arms";[40] b) the determination of the meaning of a term existing in common language in the domain of a specialist language of a particular field of science and social practice in which the equivocal term also exists, e.g. in the language of medicine, economics, materials science, material science, etc.; c) a situation in which the adoption of the common meaning would lead to logical absurdity (e.g. negation of the principle of contradiction), empirical absurdity (e.g. negation of the law of gravity) or axiological absurdity in the form of negation of the generally acknowledged hierarchy of values (e.g. a claim that the life of a child is worth less than the life of an adult).[41] Let us note that in case (a), the strong rationale is the authority of a democratic legislator. In cases (b) and (c), in turn, the strong rationale is the assumption of rationality/perfection of the legislator, which is a presupposition of both doctrinal and operative interpretation. According to the interpretive directive under consideration, the abovementioned cases, in which a radical departure from the common meaning is justified, should be an exhaustive, finite list.

In the moderate variant, we adopt a narrow understanding of the meaning of a term in common language, which encompasses the "positive semantic core" determined through the direct understanding of the term being interpreted. Following such an assumption, a moderate departure from the common meaning of a term would involve making a broadening or narrowing interpretation. In the first case, a departure from the common meaning of a term would be to expand the scope of the interpreted term to include elements belonging to the "semantic shadow zone".[42] In the second case, departing from the common meaning of a term would involve narrowing the scope of the term being interpreted by eliminating some elements from the area of the "positive semantic core". In both cases, the rationales behind such an act of the interpreter may be linguistic rationales (e.g. reference

[40] Act of 21 May 1999 on arms and ammunition (Journal of Laws of the Republic of Poland of 1999 No. 53, item 549).

[41] K. Płeszka, *Językowe znaczenie tekstu prawnego jako granica wykładni*, [in:] M. Zirk-Sadowski (ed.), *Filozoficzno-teoretyczne problemy sądowego stosowania prawa*, Łódź 1997, p. 77.

[42] J. Wróblewski, *Interpretatio extensiva*…, p. 116.

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to the linguistic microcontext/macrocontext), systemic rationales (e.g. reference to the principles of law) or functional rationales (e.g. reference to the purposes/functions of law or moral rules). In this case, the scope of the term, which includes a "positive semantic core" and a "semantic shadow zone", defines the semantic field in which interpretive procedures can take place as necessitated by linguistic, systemic, and functional rationales. In other words, in the case of a moderate deviation/departure, the interpreter's freedom is determined by the possible or acceptable lexical meaning that the term being interpreted has in common, everyday language.

As a result of the analysis, the directive referred to as the presumption of common language should be considered a framework directive that defines the scope of the interpreter's permissible freedom or discretion in all three types of interpretation, i.e. linguistic, systemic, and functional. Acknowledging that the interpretive directive considered here acts as a certain framework reveals another aspect of the claim fundamental to the paradigm in question, which implies that the meaning of a legal text is always, at least to some extent, independent of the interpreter. Earlier, I stressed the fact that in the Ajdukiewicz-Wróblewski semantics, the rules of the sense of the language of the law as a register of common language function as objectified meaning directives that a language user must follow if they want to make use of said language. At present, I wish to emphasise that even when these sense directives are questionable, which is the case when the language of the law appears to be vague, the interpreter is not allowed to deviate from these directives except in the three situations discussed above, i.e. when such a decision, which constitutes a radical departure from the common meaning of a term or expression, can be considered legitimate, justified. This means that in the remaining cases where the language of the law is found to be vague, the interpreter must operate within the framework established by the scope of the term as determined by the possible or permissible lexical meaning of the term in common language. As a result, the meaning of a legal text is at least to some extent independent of the interpreter aiming for the degree of qualification clarity necessary to resolve a particular case – not only in a situation of isomorphy but also in a situation of interpretation.

To summarise this part of the discussion, what needs to be stressed is that the interpretive paradigm proposed in Jerzy Wróblewski's theory of interpretation is based on the following assumptions: 1) The language of the law is a register of the natural ethnic language, which means that the language of the law is the generally understood common language; 2) The law formulated in common language is marked in standard cases of its application by pragmatic clarity that eliminates the need for interpretation; 3) In special cases of vagueness of a legal text, i.e. cases

that justify the need for interpretation, it is possible to deviate from the permissible meaning that the interpreted term has in common language only as an exception; 4) When performing an act of interpretation, the interpreter establishes the meaning of the legal text within the possible lexical meaning that the term being interpreted has in everyday, common language; 5) The presumption of pragmatic clarity of a legal text and the presumption of common language as an interpretive directive imply a presumption of universal linguistic competence to engage in legal discourse. What I mean by 'universal linguistic competence' is competence at the level of the language of the law as a register of common language, competence available to every so-called "ordinary addressee of a legal text".[43]

## Juriscentrism

The starting point for juriscentrism in its classical version, proposed by Artur Kozak, is a view referred to as interpretivism. This view consists of two theses that deal with how cultural objects exist and how they come to be known.[44] The first thesis of interpretivism assumes that the reality of cultural objects is not extra-mental. As a result, cultural cognition (cognition of cultural objects) is necessarily value--laden. The second thesis of interpretivism is that the justification for the reality of cultural objects can be found in the social forms of human existence, or the culture produced by society. This means that the reality of cultural objects exists in the network of interactions that affect and 'mould' all members of society. In other words, this reality manifests itself in institutionally determined thought patterns. According to this thesis, the reality of cultural objects is created by the institutional structure within which social life occurs. Consequently, the reality of these objects is only accessible from an intra-institutional perspective. To put it differently, in order for there to be a cultural object of a certain type, there must exist institutionally determined cognitive perspectives that make it possible for that object to be perceived. Thus, the existence of cultural objects is an institutional existence because only it is essential to have a framework of certain institutions to generate senses (meanings) which, when attributed to material objects, become cultural objects.[45]

These views, when applied to law, result in the recognition of law as a cultural object that exists only within the intra-institutional practice of law. The credo of

[43] Idem, *Zasady tworzenia prawa*, Warszawa 1984, p. 109.

[44] A. Kozak, *Granice prawniczej władzy dyskrecjonalnej*, Wrocław 2002, p. 138.

[45] A. Kozak, *Trzy modele praktyki prawniczej*, [in:] J. Stelmach (ed.), *Studia z filozofii prawa*, iss. 2, Kraków 2003, pp. 147–149; idem, *Granice…*, pp. 49–50.

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juriscentrism in its classical version is as follows: "Lawyers who possess esoteric knowledge can represent the social existence of law. This existence takes place not only through the interpretation of a legal text, in which the law is constituted, but also through the construction of a peculiar institutional world, a structure of objects whose reality is obvious and accessible only to subjects formed in a specific regime of education in law. To put it another way, the lawyers themselves have realised that a significant part of their practice involves 'redescribing' the surrounding common world of everyday experience in esoteric terms transforming the 'tame' and common world of everyday life into a world inaccessible and incomprehensible to the profane."[46]

The following passage may be highly useful to better describe the version of juriscentrism discussed in this paper: "In this interpretive paradigm, the status of reality is acquired not only by the rules of language, but, most importantly, by law understood as a structure that precedes the legal text, but which is not entangled in the domain of morality – like natural law, but is a self-contained being, so to speak."[47] It seems that when speaking of law as a "structure preceding the legal text", the author of the quoted passage means the mental constructs that form the intra-institutional structure of the legal world, such as – for example – the rules of exegesis of legal texts, which lawyers apply in the process of legal interpretation in the broadest sense. From such a perspective, law as a "structure that precedes the legal text" would be a kind of autonomous legal reason that inhabits the intra-institutional structures of the legal world, and which creates an "intra-institutional cognitive structure" outside of which law simply ceases to exist.

In the juriscentric paradigm, it is this autonomous legal reason, referred to as the "intra-institutional cognitive perspective", that is the reality that determines the reality of law as a cultural fact. In the juriscentric paradigm, law is not an interpretive fact – assuming that interpretation is understood as a process of seeking normative standards (patterns of behaviour) by determining the meaning of legal texts. At the level of ontological decisions, the jurisprudential paradigm assumes that law is an institutional fact that does not exist before or outside the "intra-institutional cognitive perspective", which consists of "esoteric" categories of legal reasoning. These "esoteric" mental structures of professional lawyers can be reduced, with some simplification, to what Zygmunt Ziembiński referred to as the "normative theory of the sources of law."[48]And since this is so, then the existence of the

[46] Ibidem, p. 140.

[47] Ibidem, p. 142.

[48] Idem, *Myślenie analityczne w nauce prawa i praktyce prawniczej*, Wrocław 2010, p. 245; cf. also: M. Paździora, *Racjonalność praktyki prawniczej w projekcie juryscentryzmu Artura Kozaka*, [in:] P. Jabłoński et al. (eds.), *Perspektywy juryscentryzmu*, Wrocław 2011, pp. 144–145.

law depends on professional lawyers' approval and acknowledgement of the two elements that make up the said "legal reason". One element is the rules for recognising certain facts as law-making facts. The other element is the rules for the exegesis of legal texts, defined as rules for relating specific legal norms to the facts of law-making.[49]

Interestingly enough, the ontological and epistemological decisions that form the juriscentric paradigm determine the issues related to the understanding of the language of the law and legal language alike. In the juriscentric paradigm, this distinction becomes no longer valid. If we consider that the law exists in the mental structures of professional lawyers, this distinction is not possible at all because the language of the law is no longer the language of the legislator, but only the language of professional lawyers – one in which the categories of legal reason manifest their existence. Of course, this language is not the common language used by "the profane".

A more refined, sophisticated version of juriscentrism was offered by Marcin Matczak in his *Imperium tekstu*.[50] While the classical version of juriscentrism is concerned mainly with ontological decisions on how legal phenomena exist, its sophisticated version is a concept of legal interpretation that makes practical of use these ontological settlements. This concept can be viewed as sophisticated, more elaborate because the proposed vision of legal interpretation is founded on extensive considerations concerned with the criticism of semantic internalism and aimed at justifying the adoption of an externalist position on semantic issues.[51] While in the first case the meaning of a term is determined by the intention of the creator of the text, in the second case, the meaning of the term depends on the practice of relating the term to the objects that the term denotes.

In the sophisticated version of juriscentrism, the law is made up of legal norms treated as mental structures of professional lawyers, generated in the course of intra-institutional interpretive practice.[52] Norms conceived in this way do not define patterns of behaviour, but describe a postulated world.[53] Law as a system of mental structures of professional lawyers is the result of the interpretation of legal texts, which consist of legal rules. In this sense, the law that exists in the mental structures of lawyers is an interpretive fact, i.e. one that does not exist before or outside

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49 Z. Ziembiński, *Problemy podstawowe prawoznawstwa*, Warszawa 1980, pp. 246–247; idem, *Szkice z metodologii szczegółowych nauk prawnych*, Warszawa–Poznań, 1983, pp. 10–13.

50 M. Matczak, op. cit.

51 Ibidem, p. 24 et seq.

52 Ibidem, pp. 148–153.

53 Ibidem, pp. 201–203.

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of interpretation.[54] The interpretation of a legal text is considered here as a process of creating mental structures that describe the postulated world. So, for example, the legal text reading: "Anyone who kills a person is liable to imprisonment for a minimum term of eight years, imprisonment for 25 years or imprisonment for life"[55] does not specify a rule of conduct that would forbid killing, but is a textual basis for generating a mental structure in legal reasoning that would describe a postulated world in which all murderers are imprisoned. The act of applying a norm is presented here as making the real world conform to the postulated world.[56] So, if someone kills a person and goes to prison immediately afterwards, they will then act in compliance with the norm set forth in Article 148 §1 of the Criminal Code.

In the version of juriscentrism discussed here, the language of law, i.e. the language of norms, is a different language from the language of legal rules, which the legislator uses to draw up legal texts. The acts of interpreting legal texts are seen here as acts of creating a new language of norms, different from the language of legal rules. It is important and necessary to consider interpretive directives, or – in broader terms – the rules of exegesis, as being intra-linguistic with respect to the language of norms. In this perspective, interpretive directives (rules of exegesis) act as rules that make up the language of legal norms. By applying these rules in practice, lawyers create the meanings of expressions appearing in legal texts. The intent of the legislator is irrelevant here. We are dealing here with a radical rejection of so-called semantic intentionalism, according to which the intentions of the subject using the language determine the meaning of linguistic expressions.[57] The body of the language of norms expands through successive acts of interpretation, in which so-called "naming ceremonies/original baptisms" and "grounding lineages" occur within the framework of operative and doctrinal interpretation. As a result, the language of norms is the language of lawyers – a language in which they express norms as their own mental structures that describe the postulated world. According to the classical version of juriscentrism, the language of law is the language of the intra-institutional practice of professional lawyers and – as such – remains inaccessible to laypeople. This means that this language establishes a code of access to the postulated world, which is described in the language of legal norms as mental structures determined by legal reasoning.

In the sophisticated version of juriscentrism, in line with so-called "semantic externalism", the meaning of the expressions that make up the language of the law

54 Ibidem, pp. 310–313.

55 Act of 6 June 1997 – Criminal Code (Journal of Laws of the Republic of Poland of 1997 No. 88, item 553).

56 M. Matczak, op. cit., pp. 315–316.

57 Ibidem, p. 262 et seq.

is determined by examining the linguistic practice of relating linguistic expressions to the objects those expressions designate.[58] In the case at hand, this linguistic practice that determines the meaning of expressions occurring in a legal text is the lawyers' intra-institutional interpretive practice of relating these expressions to objects that make up the postulated world. What it means is that in order to determine the postulated world as an effect of interpretation, it is necessary to be familiar with its image as determined by "naming ceremonies/original baptisms" and "grounding lineages", i.e. by previous acts of relating the interpreted terms to the objects that the postulated world consists of. In the case of operative interpretation, referring to a predetermined vision of the postulated world is pointless because in this type of interpretation it is a matter of establishing the current vision of this world, which is constantly transforming as a result of changes made to the legal text. In this type of interpretation, the meaning of the terms being interpreted cannot be determined by relating them to a postulated world that no longer exists.

In the case of sophisticated juriscentrism, the meaning of a term is an interpretive fact. This means that legal norms as mental structures that describe the postulated world do not exist before or outside the interpretation of the legal text. There are as many norms as there are mental structures generated by lawyers as a result of the comprehension of a particular part of legal text arrived at in the process of interpretation. I believe, however, that there is no analogy here with Ronald Dworkin's concept of law as an interpretive fact, in which law is also viewed as an interpretive fact. This is so because interpretation in Ronald Dworkin's terms is not an analysis of the legal text on a semantic level. According to Ronald Dworkin's idea, legal interpretation is the analysis of a text on an axiological level and involves recognising a legal text as having a coherent axiological footing in the principles of law approved and accepted in a given interpretive community.

## Conclusions

Juriscentrism can be interpreted in two ways. First, it can be considered as an attempt to build a mythology of the competence of a professional lawyer. Myth is a sense-making narrative, and in this case it serves to create an image of the lawyer as possessing extraordinary cognitive abilities. In reality, these extraordinary abilities usually involve applying the rules of exegesis of legal texts, which are largely common sense and used only in so-called difficult cases. In the sophisticated version of juriscentrism, legal interpretation is viewed as the act of transforming the dead

[58] Ibidem, pp. 97–110.

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matter of a legal text into living mental structures that describe the postulated world. In order for this to happen, it is necessary to be familiar with the specific code of access to the postulated world in the form of a particular language, which is constructed through successive acts of interpretation and in which the rules of exegesis are intra-linguistic. Consequently, the cognitive competence of laymen, limited to knowledge of common language, is far from sufficient to understand legal norms that constitute the deep normative structure embedded in the legal text.

Second, juriscentrism can be seen as an attempt to radically challenge Kant's thesis on the universality of practical reason.[59] This thesis can be found underlying the argumentative concepts of law. The assumption of a universal ability to know duty can be traced in Chaim Perelman's concept of a universal audience.[60] They can also be found in Jurgen Habermas' concept of universal communicative reason.[61] Ronald Dworkin also adopts a universalist approach to the interpretive community, arguing that every member of this community has the ability to grasp and know the principles of law and thus participate in legal discourse.[62]

The above analysis proves that the concept used to characterise juriscentrism by portraying law as an entity existing in the exclusive institutional structures of legal reason is at odds not only with the argumentative concepts of law, but also with the interpretive paradigm of the presumption of common language, founded on the grounds of analytic philosophy. Despite the different philosophical premises, the assumption of a universal ability to know duty and participate in practical discourse links the interpretive paradigm of the presumption of common language with the argumentative concepts viewing law as the domain of universal practical reason.

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[59] I. Kant, *Uzasadnienie metafizyki moralności*, Warszawa 1984, pp. 60–62, 67–68, 75–79.

[60] Ch. Perelman, *Logika prawnicza. Nowa retoryka*, Warszawa 1984, pp. 147 et seq.; idem, *Imperium retoryki. Retoryka i argumentacja*, Warszawa 2004, p. 31.

[61] J. Habermas, *Faktyczność i obowiązywanie*, Warszawa 2005, p. 22, in particular pp. 29–30, 48–51.

[62] R. Dworkin, *Law's Empire*, Cambridge Ma. 1986, pp. 62–65, 219 et seq.

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