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## On Possible Applications of Paul Ricoeur's Thought in Legal Theory<sup>1</sup>

### Abstract

The paradigm of legal positivism, historically the most important attempt at turning law into science, has been subject to thorough criticism in past decades. The criticism has concerned the most important features of legal positivism, and especially the assumption of separation of law and morality, the dogma of statute being the only source of law, and the linguistic methods of interpreting legal texts. With a crisis of the positive paradigms, the demand for new, humanistic grounds for analysing philosophical and legal questions is intensifying. This is the reason for this article's attempt to point to the application of Paul Ricoeur's achievements to the key questions of the philosophy of law. It must be emphasised that his works, and especially *Soimême comme un autre*, may serve as a foundation for a philosophy of law rejecting the problematic claims about the dualism of being and obligation, the distinction of descriptive and prescriptive languages, and also the separation of law and morality. Thanks to this, the legal topos *pacta sunt servanda* (agreements must be kept) finds a reinforcement in the ontology of the subject applying law and can be understood as an ethically significant pattern of identity of the self. Equally fruitful seems the possibility of combining the questions of the ontology of the subject applying law with the question of a legal text and its interpretation. The assumption of Ricoeur's perspective leads to a reduction in the distance between the legal text and its addressee, emphasised by the critics of legal positivism. This rapprochement becomes possible thanks to the connection of the question of the narrative that a legal text is with the question of narrativisation of the subject (i.e. the interpreter of a legal text), being itself in the *ipse* sense, i.e. applying the law.

1. In the last two hundred years positivism constituted the most influential paradigm in legal theory and practice, aiming to buttress law with elements of science. Nevertheless, despite its ambition to create a fully scientific legal method, the positivist paradigm failed to avoid significant errors. Problems arrived with its fundamental claim of a divide

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<sup>1</sup> The article evaluates thesis of a paper presented during the conference "Paul Ricoeur and the Future of the Humanities" (University of Groningen, 27th to 29th June 2013).

between law and morality, leading to the recognition of binding law that may be immoral. The positivist theory of linguistic interpretation also raises serious concerns, caused by the thesis of a permanent, unchanged meaning of the legal text. Further doubts are raised by the methodology of legal reasoning, especially by the concept of legal syllogism.<sup>2</sup> Another concern with impact on legal practice stems from the lack of coherency in the process of executing law. This has been the case since legal positivism can hardly explain a connection between the respective stages of interpretation of legal text and application of law. Consequently, it is unable to explain what an application of legal text into reality means and where its binding force and influence on human behaviour come from.<sup>3</sup>

With a theoretical and even deeper practical crisis of the positive paradigm, the demand for refreshed humanistic grounds of philosophical legal issues intensifies. This essay discusses Paul Ricoeur's thought providing grounds for a holistic theory of law, providing answers to key questions concerning validity, interpretation, and application of law.

Following the proposed paradigm of the non-positivist theory of law, one must reject the claim for disconnection of law and morality, as well as of a being and an obligation, responsible for boundary between descriptive and normative statements. Ricoeur thus expresses his opinion on the latter dualism:

For the tradition originated by Hume [...] that what should be contrasts with what actually is, without a possible transition. To prescribe (to give a prescription) stands then for something completely different than to describe. [...] We can find some reasons and arguments to reject this dichotomy. First of all, the beings which were taken into consideration are very specific: they are the beings who speak and act; what is characteristic of the notion of activity is that it is subjected to regulations which – in the form of advice, recommendation or guideline – teach [...] how to do well what one has undertaken.<sup>4</sup>

This essay examines three elements of Ricoeur's theory, which are fundamental for the proposed non-positivist vision of law. These are the theories of the subject, narrative and interpretation – remaining in a constant interplay.<sup>5</sup>

2. The first point of reference is the theory of subjectivity (being oneself – *ipseité*) developed by Ricoeur. According to this theory the subject remains “the-one-who-is-himself”

<sup>2</sup> These doubts are expressed in the so-called Jørgensen's dilemma which touches upon the difference between the nature of a normative statement (major premise) and a descriptive statement (minor premise) in the legal syllogism and the resulting hybrid nature of the conclusion (individual and specific legal norm expressed in the operative part of the judgment). See: J. Jørgensen, *Imperatives and logic*, *Erkenntnis* 1937-1938/7, pp. 288–296.

<sup>3</sup> For the sake of clarity, the presented critique concerns the postulates of the classical German legal positivism (in the version of *Gesetzespositivismus* und *Begriffsjurisprudenz*), whose representatives were, among others, R. Ihering, K. Binding and A. Merkel. The indication of the implications of P. Ricoeur's views on the current standpoints of Anglo-Saxon institutional positivism, as well as post-positivism, requires a separate study. Cf. J. Stelmach, *Współczesna filozofia interpretacji prawniczej* [Eng. *Contemporary Philosophy of Legal Interpretation*], Kraków: Wyd. WPiA UJ 1995, pp. 31–35; A. Grabowski, *W stronę postpozytywizmu prawniczego* [Eng. *Towards Legal Post-Positivism*], in: P. Jabłoński (ed.), *Czy koniec teorii prawa?* [Eng. *Is It the End of the Legal Theory?*], Acta Universitatis Wratislaviensis No 3337, PRAWO CCCXII, Wrocław: Wyd. Uniwersytetu Wrocławskiego 2011, pp. 147–161; A. Grabowski, *Prawnicze pojęcie obowiązywania prawa stanowionego* [Eng. *Juristic Concept of the Validity of Statutory Law*], Kraków: Wyd. Księgarnia Akademicka 2009, p. 380ff.; T. Pietrzykowski, *Czym jest postpozytywizm prawniczy?* [Eng. *What is Legal Post-Positivism?*], *Radca Prawny* 2009/12, pp. 2–11.

<sup>4</sup> P. Ricoeur, *Soi-même comme un autre*, Paris : Éditions du Seuil 1990, p. 200. [All the quotations were translated by the author of the essay].

<sup>5</sup> Cf. P. Ricoeur, *Figuring the Sacred. Religion, Narrative and Imagination*, Minneapolis 1995, pp. 129–275.

if he is faithful to the word given. As Ricoeur states, “the promise serves as a paradigmatic model of one’s identity”.<sup>6</sup> As a result, the person who remains oneself is the one who, regardless of the physical and mental changes that take place inside, performs the undertaken obligations. Additionally, Ricoeur relates the issue of personal identity to the theory of subject’s narrativisation.<sup>7</sup> The personal identity preservation project is considered as a narrative developed by the subject in the sense of *ipse*, staying under the influence of own imperative, similar to Kantian concept of self-legislation.

It should be noted that the abovementioned theory, and particularly the concept of oneself in the sense of *ipse*, can provide a satisfactory answer to the key question about the reason of the validity of law, justified in case of rejecting the separation of law and morals assumed by legal positivism. It can be legitimately claimed that the fact of abiding by all legally relevant agreements stems from the very ontological and ethical essence of the subject who is himself in the sense of *ipse*. I would like to point out that one of the oldest legal topoi is the ancient Roman principle of *pacta sunt servanda*. What is fundamental for law in the light of Ricoeur’s theory this topos is a concise definition of the subject who remains oneself, i.e. the one who performs contractual obligations despite changing factual circumstances, the passage of time, changes in the nature, etc. According to Ricoeur

[...] keeping promises [...] represents a challenge to time, a denial of change: even if my desire changed, even if I changed my mind or my preferences, I “shall keep my word”. [...] It is sufficient to provide a strictly ethical justification of the promise that we can draw from the obligation to protect the institution of language and of reciprocal trust of another in my fidelity.<sup>8</sup>

Another element of the theory of the subject of law, crucial from the legal perspective, is the reflexive relationship which combines the subject of law and the Other, interpreted here as the relationship of equal subjects of law. It concerns in particular the recognition of the subjectivity of the Other as a prerequisite for establishing the ontologically rooted principle of reciprocity – crucial for some branches of law, especially for concerning liability. Here the ethical acceptance of one’s actions is a derivative of recognition which is expressed in complying with the commitment assumed towards the Other. Ricoeur writes that he cannot respect himself without respecting the Other as he respects himself. “Thus, respecting the other as yourself and respecting yourself as the other become equally fundamental and crucial”.<sup>9</sup> That is the way how Ricoeur constitutes the principle of reciprocity, according to which “one should treat ‘oneself as the Other’ and ‘the Other as oneself’”. Ricoeur takes another step and develops the dialectic of reciprocity on these grounds. Here the substitutability of the roles of *oneself* and *the Other* coincides with the irreplaceability of entities as such. He also makes certain references to Aristotle’s philosophy, in particular to his concept of friendship (*philia*) as a symmetrical relationship between equals. I believe that the abovementioned equalisation goes as far as to recognise the Other as the onto-ethical premise of legal validity. Concluding, according to Ricoeur’s theory every promise is made by a subject of law as one made

<sup>6</sup> P. Ricoeur, *Parcours de la reconnaissance. Trois études*, Gallimard, Éditions Stock, 2004, p. 203.

<sup>7</sup> Cf. D. Rasmussen, *Rethinking subjectivity: narrative identity and the self*, in: R. Kearney (ed.), *Paul Ricoeur. The hermeneutics of action*, London – New Delhi: SAGE Publications 1996, pp.160–172; J. Dunne, *Beyond Sovereignty and Deconstruction: The Storied Self*, in: *Paul Ricoeur. The Hermeneutics...*, pp. 137–157.

<sup>8</sup> P. Ricoeur, *Soi-même...*, p. 149.

<sup>9</sup> P. Ricoeur, *Soi-même...*, pp. 225–226.

vis-à-vis another contracting party. It means that this legally relevant promise is perceived as an ethically significant way of being the subject of law, self-determined by the rule of reciprocity. The phenomenon of abiding by agreements thus confirms its rooting in the onto-ethics of the subject of law. These remarks confirm the accuracy of Ricoeur's theory which makes it possible to construct a coherent non-positivist theory of at least contractual law, whose central question remains the issue of the nature of the bond that connects parties to reciprocal agreements.

It should be emphasised that the conceptual background of Ricoeur's theory is surprisingly coherent with a promissory theory of contracts as developed by the Anglo-Saxon legal thought.<sup>10</sup> Its crux is the assumption that obligation arises as a result of a self-expression of the entity communicating the intention to assume the obligation. Communication with a contracting party is considered here a prerequisite to expressing the intent to assume certain liabilities.<sup>11</sup> Therefore, according to this theory, a decision to perform the obligation is made at the very moment of making the promise, while the promise itself is the first and primary source of action on the part of the obligor.<sup>12</sup>

3.1. At this point it is helpful to point some of the reasons why the application of the narrative theory developed by P. Ricoeur<sup>13</sup> in jurisprudence may prove fruitful. The narrative theory<sup>14</sup> is perceived here as an alternative to some other studies of legal language, conducted on the basis of formal logic, analytical philosophy, and/or economic analysis of law, which can be accused of narrowing the cognitive perspective.<sup>15</sup>

There are at least three research fields that can be explored by using a narrative paradigm which refers to Ricoeur's achievements.<sup>16</sup> The first consists of the analysis of the legal text construed in the context of its recipient, i.e. the subject of law.<sup>17</sup> It should be noted that the relationship between the text narrative and the self-narrative of the subject of law – as postulated by Ricoeur – provides a unique opportunity to clarify the causal power of the legal text and its validity in the personalised dimension. The second research field covers the application of the legal language (the language used by lawyers), where the narrative theory demonstrates links with the theory of interpretation and legal argumentation.<sup>18</sup> The combination of interpretation and argumentation

<sup>10</sup> As for the concept of the promissory theory of contracts see Ch. Fried, *Contract as Promise. A Theory of Contractual Obligations*, Cambridge Mass. and London, England: Harvard University Press 1981, pp. 7–27; T.M. Scalon, *Promises and Contracts*, in: P. Benson (ed.), *The Theory of Contract Law. New Essays*, Cambridge: Cambridge University Press 2007, pp. 86–117; W. Lucy, *Philosophy of Private Law*, New York: Oxford University Press 2007, p. 238. Critically: P.S. Atiyah, *Contracts, Promises and the Law of Obligations*, in: *Essays on Contracts*, Oxford: Clarendon Press 2001, pp. 1–9.

<sup>11</sup> S.A. Smith, *Contract Theory*, Oxford: Oxford University Press 2007, p. 57.

<sup>12</sup> S.A. Smith, *Contract Theory...*, p. 58.

<sup>13</sup> Cf. E. Wolicka, *Narracja i egzystencja. 'Droga okrężna' Paula Ricoeura od hermeneutyki do ontoantropologii*, Lublin: [Eng. *Narrative and Existence. Paul Ricoeur's 'Roundabout Route' from Hermeneutics to Ontoanthropology*] Wydawnictwo KUL 2010, pp. 19 ff.

<sup>14</sup> Cf. R. Altman, *A Theory of Narrative*, New York: Columbia University Press 2008, pp. 1–21.

<sup>15</sup> A similar objection was raised by P. Ricoeur towards the speech acts theory developed by J.L. Austin. Cf. P. Ricoeur, *Soi-même...*, pp. 57 ff.

<sup>16</sup> Cf. P. Ricoeur *Time and Narrative*, Chicago: The University of Chicago Press 1990; P. Ricoeur, *Soi-même...*, pp. 137–198; P. Ricoeur, *The Model of the Text: Meaningful Action Considered as the Text*, in: *From Text to Action. Essays in Hermeneutics*, Northwestern University Press, 2007, pp. 144–167. See also: P. Ricoeur, *Greimas narrative grammar*, *New Literary History* 1989/3, in F. Collins, P. Perron (eds.), *Greimassian Semiotics*, special issue,, pp. 581–608.

<sup>17</sup> Cf. D. Rasmussen, *Rethinking subjectivity: narrative identity and the self*, in: *Paul Ricoeur. The hermeneutics...*

<sup>18</sup> The topics relevant to this issue were raised by Ricoeur, among others in the book *Reflections on the Just*. Cf. P. Ricoeur, *Reflection of the Just*, The University of Chicago Press 2007, pp. 59–71. Cf. D.M. Kaplan, *Ricoeur's critical theory*, SUNY 2003, pp. 69–74.

allows a new look at the specific nature of argumentations which can be recognised, in the case of various legal professions, as the case of different narratives. Accordingly, we are provided with an instrument that allows us to capture, to use Ricoeur's language, the *narrative truth* of judicial decisions, the argumentation of attorneys, contracting parties, etc. The third and the widest field of application of the narrative theory concerns the unification of the theory of law as *the grand narrative* and the theory of human action in general. In this sphere the tools of narrative analysis are applied simultaneously towards law and reality, thus allowing the interpretation and combination of legally relevant facts with the operation of just institutions. This level covers the widest sphere of harmonisation of law as *the grand narrative* with the narrative of human life.

The three abovementioned fields of application of narrative theory correspond to three levels of the definition of ethical aspiration, understood as "the intention of a good life with the Other and for the Other in just institutions".<sup>19</sup> The first level analyses the issue of absorption of the narrative of the legal text by the self-narrative of the subject of law. In other words, it concerns the examination of questions of modifying the recipient's self-narrative by the narrative of the legal text, as a result of individualised interpretation. At the same time, the core of the analysis is the issue of the validity of law on account of the construction of the legal entity in the sense of *ipse*. What comes to the fore at the second level is the problem of a competing *narrative truth*, manifested in reciprocal agreements or in legal discourse, undertaken *with another and for another*. In turn, at the third and highest level, statutory law crystallises itself to the level of universal narrative. It is the place of creating a unified theory of interpretation of the law and human action, which constitutes the field of approximating the narrative developed by the "just institution" and the narrative which captures legally relevant causality in human action.

Nevertheless, what merits the analysis of the Ricoeur's narrative theory is the abolition of the distinction between *is* and *ought to* and, consequently, between descriptive and normative statements. As has been mentioned this distinction was one of the main objectives of legal positivism, which resulted in losing the essence of the relationship between what is normative and what is descriptive from sight. The remarks below focus on the said relationship and on specific, common features of the legal text narrative and self-narrative of the subject of law.

Writing about the narrativisation of the subject, Ricoeur removes the border between the narrative, command, and action construed as three different aspects of being oneself in the sense of *ipse*. The author states: "A triad of describe-tell-prescribe came to my mind, whereas every moment of a triad contains a peculiar relationship of establishing the activity with establishing oneself".<sup>20</sup> Consequently, Ricoeur writes: "We [...] will defend the claim that the identity of the character can be understood by making it the centre of an intrigue, first applied to the narrated action; it can be said that the intrigue arises from the material of the very character."<sup>21</sup> This comment lets among others explain why people at the basic onto-ethical level feel bound by the content of *normative narratives* of codes, acts of law, contracts, and why they undertake actions that aim to fulfil legal standards.

<sup>19</sup> P. Ricoeur, *Soi-même...*, p. 202.

<sup>20</sup> P. Ricoeur, *Soi-même...*, p. 138–139.

<sup>21</sup> P. Ricoeur, *Soi-même...*, p. 170.

The impact of the *normative narratives* on the dynamics of the three aspects of being oneself requires further evaluation. First, the abovementioned legal topoi, such as the principle of *pacta sunt servanda*, can be considered concise narratives that determine acting of the subject of law in the sense of *ipse*. Similarly, on the basis of reciprocal agreements, the content of every agreement is regarded as a form of narrative, in which – to use Ricoeur’s words – “a transition between describing, prescribing and acting” on the part of the parties to the agreement takes place. These observations also constitute a point of reference towards legal texts. In my view – to quote Ricoeur again – “complex operations are processed in narrative fictions, rich in anticipations of an ethical nature” in the texts of codes, acts of law, and regulations. For example, Article 415 of the Polish Civil Code sets forth that “Whoever by his fault causes damage to another is obliged to remedy it”.<sup>22</sup> This model formulation can be considered a narrative – a description that contains an anticipation of *ought*-character, aimed at the addressee of the legal norm to take a specific action. Ultimately, the validity of topoi, compliance with contractual provisions and statutory norms, namely the validity of law in general, has the deepest ontological and ethical ground. It stems from the consistent self-narrative of the subject of law in which someone bound by one’s own command *abides by agreements* or – in the light of Ricoeur’s theory – is not himself (in the sense of *ipse*), because he is not faithful to the ethical *plan of himself*.

I would like to emphasise a certain convergence of Ricoeur’s theory with the jurisprudential speech acts theory which differentiates, after J.L. Austin, the illocutionary, locutionary and perlocutionary aspect of statements.<sup>23</sup> In fact, Ricoeur himself stresses the importance of the achievements of ordinary language school in linguistics.<sup>24</sup> Ricoeur’s theory referring to legal texts manifests a consolidation in ethics and ontology of the subject, and not only in the theory of language, which Ricoeur treats at a certain stage of his research as too restrictive.<sup>25</sup>

3.2. The issue of internalising the *normative narrative* of a legal text by the self-narrative of the subject of law requires further development in the context of the problem of legal interpretation. It should be noted that one of Ricoeur’s greatest achievements within the narrative paradigm is a comprehensive theory of interpretation of two seemingly distant phenomena: literary texts<sup>26</sup> and human action. Ricoeur indeed believed that the literary narratives are interpreted in the same way as the real stories of human life. Furthermore, in compliance with the hermeneutic tradition, the philosopher claimed that literary texts are peculiar intermediaries in understanding human action. (Ricoeur referred to it by using ancient tragedies – *Antigone*<sup>27</sup> and *Oedipus at Colonus*<sup>28</sup> – as examples). In this context, it can be said that the interpretation of the legal text allows the recipient to undertake a normative reinterpretation of the self (own actions) in the

<sup>22</sup> Civil Code of 23 April 1964, Journal of Laws No. 16, item 93, as amended.

<sup>23</sup> J.L. Austin, *How to Do Things with Words*, Oxford: Oxford University Press 1962, pp. 101 ff. Cf. M. Matczak, *Teoria tekstu Paula Ricoeura* [Eng. *Paul Ricoeur’s theory of text*], in: S. Kaźmierczyk (ed.), *Z zagadnień wykładni prawa* [Eng. *On the issues of legal interpretation*], Acta Universitatis Wratislaviensis No 2032, PRAWO CCLXII, Wrocław 1997, p. 85.

<sup>24</sup> P. Ricoeur, *From Existentialism to the Philosophy of Language*, *Philosophy Today* 1973/2, p. 90.

<sup>25</sup> P. Ricoeur, *Soi-même...*, pp. 56–60.

<sup>26</sup> On Ricoeur’s concept of text see: M. Matczak, *Teoria tekstu...*, pp. 86–91.

<sup>27</sup> P. Ricoeur, *Soi-même...*, pp. 281–290.

<sup>28</sup> P. Ricoeur, *Parcours...*, pp. 130–135.

world and to create an individualised, legally relevant narrative which is supported by the basic illocutionary style of the legal text.

According to Ricoeur, the text provides the interpreter with an “inalienable reference dimension”, the so-called existential reference that Ricoeur after Heidegger defines as *being-in-the-world*.<sup>29</sup> Ricoeur argues that what is found in the text is a certain suggestion of the world that could be “dwelt in” by the reader had he “made it the object of projection of his own abilities”.<sup>30</sup> The interpretation provides the possibility of entering into such a “world of the text” which is not the world of everyday language but a tool for distancing oneself from reality and returning to it through literary fiction. Therefore, literary work allows the reader to take a new view of reality.<sup>31</sup> These observations have profound reference in the context of the issue of the legal text and the results of its interpretation. It could be argued that the text of the codes, acts of law, EU directives, etc. contains a proposal for a normative world. In the course of reading such a text, the addressees distance themselves from the present reality in order to revisit it with a new possibility of *being-in-the-world* of legal obligations. In this way, in the realm of Ricoeur's views, making a projection of one's own possibilities into the world of the legal text stands for a legally relevant reinterpretation of own activities and oneself. Consequently, what can be encountered is a modification of the self-narrative of the being, namely the reader, being the recipient of the legal text.<sup>32</sup>

4. Returning to the central idea of this essay, I would like to refer to the assumptions of legal positivism concerning the interpretation of legal texts. The proposed theory rejects the reductionist claim about the only *true* meaning of the legal text and the related logical-linguistic method of interpreting legal texts.<sup>33</sup> Ricoeur's thought allows going beyond this restrictive perspective which gives ground to numerous problems, arising for example in the practice of the judicial application of the law. This is the case, since in Ricoeur's opinion the text is autonomous in relation to the act of reading, which is always treated as being currently undertaken. When adopting such a perspective, the logical-linguistic interpretation of legal texts results in losing the so-called text reference.<sup>34</sup> While applying law in practice, the fact of overemphasising the role of the logical-linguistic interpretation may pose a risk of missing the bond between the legal text and the reality that it refers to. Thus, Ricoeur's legacy can serve as a remedy for the weaknesses of the interpretation opted for by positivism, as it provides a uniform theory of interpreting *legal narratives* and the legally relevant narrative of human life.

What deserves a separate analysis is the problem of the relation between the author (parliament, government, minister, etc.) and the legal text, and the role that the author's intention attributed to the subsequent readings of normative acts. Ricoeur points out that the recorded form constitutes the autonomy of the text vis-à-vis the author's intent because “the textual meaning and the psychological meaning have different intentions”.<sup>35</sup>

<sup>29</sup> P. Ricoeur, *Hermeneutic Function of Distanciation*, in: *From Text...*, p. 86.

<sup>30</sup> The phrase was borrowed by Ricoeur from M. Heidegger's *Being and Time*. Cf. M. Heidegger, *Being and Time*, Oxford 1978.

<sup>31</sup> P. Ricoeur, *Hermeneutic...*, p. 86.

<sup>32</sup> P. Ricoeur, *Hermeneutic...*, p. 88.

<sup>33</sup> Cf. G.H. Taylor, *Ricoeur and law: the distinctiveness of legal hermeneutics*, in: S. Davidson (ed.), *Ricoeur across disciplines*, London 2010, pp. 84–101. The essay constitutes a unique example of the application of Ricoeur's achievements to the issue of judicial decision making and interpretation of legal texts.

<sup>34</sup> P. Ricoeur, *Hermeneutic...*, p. 85.

<sup>35</sup> P. Ricoeur, *Hermeneutic...*, p. 83.

Ricoeur believes that as a result, the text *escapes* a certain finite horizon of the author's intention, that is, metaphorically speaking, it "explodes his world".<sup>36</sup> For these reasons, Ricoeur's theory does not accommodate the theory of static interpretation, according to which the meaning of a legal text remains unchanged in time. Then, in the view of "the author's world being broken by the text" there is no justification for the concept of the so-called authentic interpretation of the normative act, according to which it is binding only if undertaken by a formally vested author (parliament, government, minister, etc.) Similarly, there is no justification for granting the right to a universally binding interpretation of such text to a specific legal authority, such as the Constitutional Court or the Supreme Court. From the perspective of the respective views, these concepts are manifestations of unjustified subjectification of the meaning of the normative act and cases of appropriating its text by one of the many possible interpreters.

The significance of the views analysed for legal theory is even more visible in the context of Ricoeur directly raising the problem of interpretation referring to the achievements of R. Dworkin, and enumerating the similarities in the interpretation of literary texts and of law, understood as *the grand narrative*.<sup>37</sup> Ricoeur suggests an analogy between the open meaning of the text and open sense of law. In the light of Dworkin's views on the so-called "hard cases", the determination of the meaning of law in force goes beyond the existing precedents to the same extent as determining the meaning of the text goes beyond the intent of the author.<sup>38</sup> Therefore, Ricoeur states that law is characterised by inherently interpretive specificity, similar to the specifics of the text which is open to diverse readings.

Another similarity concerns the consistency of interpretation, resulting from the coherence of the elements of the undertaken narrative. In the case of the interpretation of the text, narrative coherence is due to the relationships between sentences, chapters, etc. In turn, in the case of legal interpretation, narrative coherence stems from the structure of law, as determined by precedents and judgments. The culture of positive law provides the basis for the intensification of the similarities indicated by Ricoeur, on account of the identification of the meaning of the interpreted legal text with the valid law. It should be noted that in Ricoeur's view, the regulative idea of interpreting both the text and the law is a hermeneutically understood *historicity* which determines the consistency of the interpretation from the perspective of the objectives that are relevant *here and now*.

5. In the last part of the essay, I would like to highlight the role of Ricoeur's achievements in clarifying the relationship between interpretation and legal argumentation. It should be noted that extreme legal positivism considers any argumentation that goes beyond the frames of the logical-linguistic interpretation unnecessary. Nevertheless, in the past forty years legal argumentation has gained a prominent place in philosophy due to theorists including Ch. Perelman and R. Alexy. It is significant that, when touching on the issue of the relationship between interpretation and argumentation, Ricoeur benefits directly from the output of R. Alexy and J. Habermas.<sup>39</sup>

Ricoeur's position on interpretation and argumentation being dialectically complementary is of particular importance.<sup>40</sup> This means that argumentation is present both in

<sup>36</sup> P. Ricoeur, *Hermeneutic...*, p. 83.

<sup>37</sup> P. Ricoeur, *The just*, Chicago: The University of Chicago Press 2000, p. 112.

<sup>38</sup> Cf. R. Dworkin, *Taking rights seriously*, Chennai, India: Bloomsbury Academic 2013.

<sup>39</sup> P. Ricoeur, *The just...*, p.117

<sup>40</sup> D.M. Kaplan, *Ricoeur's critical theory...*, p. 69.

the interpretation of legal texts, which aims to formulate legal norms, and in the interpretation of facts and causal relationships between them. Thus, referring the norm to a specific case “which is the hallmark of legal argumentation” is always an act of interpretation. Ricoeur’s view constitutes an opposition vis-à-vis the theory of legal syllogism, considered as the method of reasoning postulated by legal positivism. The theory assumes that legal reasoning is based on two analytically distinguished premises, of which the major one is the abstract and general legal norm contained in the legal text, while the minor one is the description of the facts. The subsumption of the description of the facts to the norm gives rise to the fundamental doubts about a combination of normative and descriptive elements in the conclusion. Positivism-oriented theory of law remains helpless in the face of a double – normative and descriptive – meaning of an individual and specific legal norm, which constitutes the result of reasoning, revealed e.g. in the operative part of a judicial decision. Even more serious practical problems are caused by the positivist standpoint in the judicial application of law. These problems concern both the different interpretations of legal texts by litigating parties, and divergent testimonies of witnesses who represent different views on the facts (on the basis of the above position, different versions of the events presented before the court inevitably lead to the objection of untruth).

Contrary to this unclear picture, Ricoeur’s views allow creating a uniform theory of legal reasoning, associated with a flexible vision of the relationship between legal norms and reality. This is the case since, according to the narrative theory, what undergoes interpretation are both the facts and norms, from the perspective of their mutual compatibility.<sup>41</sup> Thus, the coherence of the narrative of the legal text and the narrative of a specific case is the result of interpretative and argumentative attempts of the mediator, lawyer, judge, etc. Ricoeur argues that there is nothing like a brute fact, which could serve as evidence, e.g. in legal proceedings. What is considered a specific case is in fact the result of ascertainment of certain relationships that form a narrative, on the basis of the argumentation developed by the narrator.<sup>42</sup> This view presented by Ricoeur constitutes a satisfying, practical alternative to the assumptions of the theory of legal syllogism. The narrative paradigm, with particular emphasis on the dialectic of interpretation and argumentation, reveals the apparent opposition of what is descriptive and normative. Above all, it provides an intimate perspective of understanding legal texts and legally relevant human actions. In the broadest perspective, as I have argued, the narrative paradigm can bridge the gap between the interpretation of the legal text and the application of law.

A question emerges whether it is possible to talk about the truth of legal reasoning on the basis of the narrative theory. Ricoeur believes that the claim to truth is correlated with the consistency of the undertaken narrative.<sup>43</sup> This means that in his opinion truth is a consequence of the internal cohesion of argumentation and interpretation of legal texts and facts.<sup>44</sup> I would like to emphasise that the narrative concept of truth as a correlate of coherence of reasoning developed by the participants of the legal discourse constitutes a remarkable alternative to the restrictive, logical-formal truth of reasoning, postulated by legal positivism. Doubtlessly, it mirrors the experiences of judges, litigants, contracting parties, and other subjects engaged in the process of execution of law.

<sup>41</sup> D.M. Kaplan, *Ricoeur's critical theory...*, p. 72.

<sup>42</sup> D.M. Kaplan, *Ricoeur's critical theory...*, p. 73.

<sup>43</sup> P. Ricoeur, *Reflection...*, p. 70.

<sup>44</sup> Ricoeur reaches this conclusion while discussing the concept of practical syllogism developed by Dworkin. Cf. P. Ricoeur, *Reflection...*, pp. 69–70.

6. Many other elements of Paul Ricoeur's theory have their creative reference in the context of legal theory. For example, the dialectic of the event and the dialectic of the meaning can be applied while analysing legal discourse, besides the dialectic of argumentation and interpretation.<sup>45</sup> This makes it possible to capture some important aspects of the judicial application of law. In the discourse undertaken in the courtroom, *events* – i.e., the statements and actions of litigating parties, attorneys, etc. – have their permanent meanings in the form of specific results of the proceedings. An example comes in the act of pronouncing the operative part of the judgment, in which the event – the statement made by the judge – induces permanent normative consequences for the litigating parties. The fact that legal discourse is manifested as a certain event, yet it creates specific normative meanings also sheds a new light on the source of permanence of the legal consequences of oral contracts. When analysing the act of making an oral contract, it is possible to indicate a momentary aspect of the event – uttering elusive words, and the aspect of meaning and significance – the fact of the contracting parties being bound by the promise given.

Among other issues, application of the narrative theory in the analysis of mutual interrelations between law and legal ethics proves fruitful.<sup>46</sup> When making a separation between law and morals, legal positivism sealed the separation of the two phenomena. The fact of removing legal ethics beyond the scope of legal theory provided the grounds for the potential abuse carried out in the majesty of the rule of law by fascist judges, Stalinist prosecutors, and – in contemporary times – by cynical litigation lawyers. Ricoeur's theory captures the correlation between law and legal ethics already at the level of the onto-ethics of a lawyer, judge, or prosecutor. The paradigm that combines the self-narrative of the subject of law with the great legal narrative helps to restore the appropriate place of professional ethics in practical application of law on all three levels of defining ethical aspiration.

7. To conclude, in legal theory, Ricoeur's theory let numerous spheres, artificially separated by legal positivism, be bridged. Especially, it allows to fill the gap between the legal text and action in the dimension of every single legal entity. Moreover, it removes the problematic boundary between the descriptive and normative aspects of legal provisions as introduced by codes, regulations, directives, etc. Moreover, the theory provides onto-ethical legitimacy for the theory of legal validity, at whose heart the promise of performing the obligation being made by a subject of law lies. The correlated narrative theory is successfully manifested both in reference to the issue of the subject of law and the legal text. These elements make it possible to remove the positivist boundaries between the subject, the interpretation of the legal text, and the application of law. Ricoeur's theory ultimately constitutes the basis of methodologically consistent non-positivist theory of the process of execution of law. Furthermore, his definition of ethical aspiration (the intention of a good life with the Other and for the Other in just institutions) combines three dimensions or scales in which law is manifested. It brings together the micro-scale of the subject of law, the level of legally relative interpersonal relationship, such as can be found e.g. in mutual agreements and the macro-scale of just institutions, and *the grand narratives* – with which Ricoeur vests statutory law – constructing the framework of a comprehensive vision of law.

<sup>45</sup> Cf. P. Ricoeur, *Interpretation Theory. Discourse and the Surplus of Meaning*, Fort Worth, Texas 1976, pp. 11–12; P. Ricoeur, *Hermeneutic...*, pp. 77–78.

<sup>46</sup> Cf. R. Kearney, *Narrative imagination: between ethics and poetics*, in: *Paul Ricoeur. The hermeneutics...*, pp. 173–190.

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