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Law, Cubism, Semiotics

Cubist form fragmentation, in particular its destruction of a harmonious surface-structure as well as its immanent breach of reference and representation is a sign of silence, which characterizes paintings in general. When the death of a figurative image occurs, language is its first victim. That silence is in the picture – pictures are arranged to radiate silence as a sign, and that purpose seems essential in pictorial representation: Mondrian, Rothko and others painted that fascination ([22] 171). Can one do this at all? What does this mean? Does it give a clue for a new and, above all, an encompassing understanding of the multiple aspects and fragments of our jubilee's life work?

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1 Painters create signs like lawyers create names

[Rz 1] Lawyers and painters – both take their part in transforming all there is around us into signs and the signs into sign-systems. Peirce would have said: the first by means of *visual* semiotics, the latter by *linguistic* semiotics. Talking about paintings is, not unlike talking about law, never a free-floating and non-obliging activity. The proximity of the two, painters and lawyers, is challenging and exemplary. Be aware how their commonness concerns a parallel rather than a form of intermingling two scenes of transformation.

[Rz 2] Painters and lawyers: should they be brought together, and if so, in what precise regards? It might be an epistemological adventure to detect more than a parallel. A slight change of perspective colors this question with semiotic relevance: the arts and the law, do they match? Many lawyers underline how thinking and performing law is an art in itself. Legal writing is an art, they claim, legal speeches an artistic creation and their management of arguments a respectable art form and so is their exploration in the realm of law's vocabulary.

[Rz 3] *Words* are emphasized; law and arts (even the art of painting) are constantly filled with narration, speculation and other verbal correlation efforts. Do not forget how the art of persuasion has always been a branch of the arts in occidental culture; the Ancient Greeks thus evoked their rhetoric! It is clear how language inspires and shapes the need for communication, which characterizes the energy unfolded by each artist. With an artist's words emerges a self-understanding and those very same words show how all forms and styles of art fulfill a need for interpretation. They all join different facts by means of suggested, experimented, and ventured word utterances that focus on relations. Each work of art, as each legal move, establishes relations between different worlds, always represented in different discourses. And, what is more, alliances of words can lead to clusters, which we perceive as *names of a particular style*: consider positivism, pragmatism or functionalism in law and legal philosophy; expressionism, cubism or realism in painting. But is law, although perhaps fragmentarily artistic at its high tides, not just a social technique? Painters and lawyers have their own definitions of their works and their subsequent social roles. How does their semiotics fit to those definitions and thought patterns?

[Rz 4] The influence of cubist contributions to 20th century Western culture and its change from representation towards conceptualization (a move at least parallel to any semiotic understanding of reality) underlines the connections between cubism, literature and general discourse in important epistemological regards. A word takes refuge in the visual, dissolves its ties with grammar and syntax in order to ultimately find a freer expression and independent meaning formation. Words change into a sign or a meaning via images, which are witness of the power of cubist (re)presentation, and from there they refer to literature again. When a poem or a prose line fails,

a picture accesses image, subjectivity, time or the resurface of the visual. Integrating word and image is a cubist imagination, as Braque, Schwitters, Marinetti or Apollinaire showed, or a new typography, an *écriture automatique* (Breton, G. Stein, Williams James» psychology), or Ezra Pound's ideogram writings. Beyond such new conceptions of writing are daring architectural forms and cubist constructions of architects who had a «cubist town» in mind, as Ames, Loos. Rietveld, Van Doesburg showed.

[Rz 5] Switch again from painters to painting and from lawyers to law. That is a switch from an individual's function towards the wider field of that function and it's semiotic perspective. This more general and abstract level of analysis opens a way towards understanding the semiotic relevance of painting and of semiotics in general. Cubism provided a style and with it also an example of how semiotics can initiate the exploration of new dimensions in modern life. The path of this example leads via, and often solely towards, abstraction – as the 2013 MoMa exhibition *Inventing Abstraction, 1910-1925* shows. Only a few years more than a century ago, Picasso, living in a small village in the Pyrenean alpine mountains, showed some of his intimates a painting that would become world famous and classified as the first constructed along cubist principles. The art dealer and philosopher Daniel Henry Kahnweiler tells us that a complete silence fell during this confrontation until Matisse started to laugh out loud. ([19],[20]) The title Picasso proposed for this canvas, still within traditional frames of reference, was «Le Bordel d'Avignon» and purposes of morality, exhibition strategy and commerce changed it into «Les Demoiselles d'Avignon». Prehistoric Iberian statues and African masks inspired the contrasting forms, colors and images of the five female figures. The images of Cezanne, in particular his large canvasses with bathing women, were still in everyone's mind. We know today how the silence of the spectators had *semiotic relevance*. A canvas *proposing itself as a sign* provokes silence – is this episode specific for a painting or for the forwarding of a pictorial style, or is this also an experience for other discourses, such as law and legal thought formation embedded in semiotic understandings?

2 Being/Sign

[Rz 6] One should go back to what Charles S. Peirce used to suggest: there are no signs; in other words: nothing is a sign but everything can become a sign! The tension is between the fixed «is» and the process of «becoming». Only signs as a temporary power to create meaning, function in the course of life. Peirce emphasizes the human situation as being in process, and he introduces the semiotic subject not as a fixed means but as a way of perceiving reality. ([10] 20f.) The anthropologist Geertz emphasized the relation between sign systems and their various modes of implementation, suggesting:

If we are to have a semiotics of art (or for that matter, of any sign system not axiomatically self-contained), we are going to have to engage in a kind of natural history of signs and symbols, an ethnography of the vehicles of meaning (...) This is not a plea for inductivism, but for turning the analytic powers of semiotic theory (...) away from an investigation of signs in abstraction toward an investigation of them in their natural habitat... ([15] 94-120).

[Rz 7] Such a natural habitat is not only a specific culture but can also be a specific style of life and art. One can distinguish various *semiotic subjects* in different cultures, discourses and styles. The semiotic subject as a way of looking at the world can be known as segmenting the universe and thus coupling semantic units with expression units: this labor causes it to continuously

destroy and restructure its social and historical concretions. ([15] 315), ([25] Vol.5. 238). Could we appreciate the semiotic subject in that manner and transfer that appreciation to the painter and eventually the lawyer? This seems highly appropriate, in particular when we take a Cubist painting as a model theory. The two issues, highlighted in Peirce's remarks, are important in it because they characterize indeed cubist activities: (a) the specific labor of the semiotic subject (segmenting and coupling semantic units) and (b) the activity of destruction and restructuring those units. Those two lead, however, to a third consideration: (c) what are those units in view of cubist approaches of reality?

3 The Cubist View and Style.

[Rz 8] Cubism (and the cubist style in painting and the arts) relates this fascinating context of unsolved questions to French, in particular Parisian, Fauvism. The latter was dated by expositions from 1905-1907 with Van Gogh and Gauguin as sources of inspiration and afterwards leveled to a deeper intellectual approach by Cézanne and – more forcefully – Matisse. He declared: «J'ai à peindre un corps de femme; je vais condenser la signification d'un corps en cherchant ses lignes essentielles» («When I have to paint a female body I condense the signification of the body through my search for the essential lines»). It is important to envisage here the profile of a semiotic activity, which is more or less hidden in that sentence: (a) the search for the *meaning* of a body, and (b) the search for *essential* lines to profile that meaning. Both are descriptions of how to enter *reality as a process*, in this case the female body as a living entity.

[Rz 9] The activity of the semiotic subject in the perspective of Cubism is first of all a *conceptual* activity. In other words, cubist painters no longer perceive reality «with their eyes» but rather with an activity of their «mind». They do not strive for representing an appearance but rather for grasping an essence to unveil. This attitude dominates Cubism and appears to be in hindsight a formidable revolution since Renaissance traditions. Cubist painters take a lead in that pictorial transformation, although Literary Cubism (Gertrude Stein), Film and Architecture, not to mention Music (Schönberg) also embraced the principle of playing with complex motives and styles to ultimately create a new entity. The idea of a «conceptual painting» dominates the wane of the 20th century by semiotically relevant means of concentrating on the problem how to access reality: either via representation or by reflection. An initiative to paint in a different mode might have important consequences of philosophical nature!

[Rz 10] Painting in another mode was not a matter of just painting, it was rather *a mode of activity*: first of all, activity of the painter in relation with his or her sub-/object, (the classical painter's job performance and attitude) and further (nobody knows when and where) an activity the viewer of it all – both in relations that differ considerably from a simple dualistic pattern. All this has important semiotic implications. Cubism emphasizes how changes and variations in the process of activity lead away from the traditional «sender-receiver» model of communication. To paint in another mode equals the unfolding of a new vision and interpretation of life. If painters create signs, then visual activity produces the dynamics of those signs and their formation, the latter being a *process* (the perception) as well as a *process-result* («the S^{te} Victoire mountains»). «Activity» is in this regard a keyword (like «life») that transcends the «sender-receiver» model, which dominated for centuries all occidental philosophies of art with focus on representation [8]. The word «activity» entails emancipation, a gain of independence of all painting elements, which is its inner dynamic.

[Rz 11] This connects some of the origins of semiotics between Peirce, Lady Victoria Welby, the Amsterdam Significs Circle and Wittgenstein's Tractatus. They shared insights of Russell, Jourdain, Alexander, and circles in Cambridge University. Language was conceived in terms of activity and meaning in terms of communication and linguistic signifying processes. Wittgenstein distinguished between «names» and «propositions,» analyzing the relation among «names» or «simple signs» used in the proposition, where the object or meaning is of the conventional order. Welby spoke of «bare signs.» Wittgenstein underlined how the rule or code that relates the sign to the object of reference is conventional. Ferdinand Saussure proposed such arbitrariness in his *Cours de linguistique generale*, 1916. He characterized the relation between *signifiant* and *signifié* in individual words (or in individual nonverbal signs) that so form «conventional,» social codes). Instead, Wittgenstein highlighted the relation between «propositional signs» (Welby's «pictorial symbol» and «representative action») and what they signify to their interpretants. Analogue to Wittgenstein's «proposition,» Welby's «pictorial symbol» and «representative action» are complete high level signifying units, which are constitutive for 'activity; in the Cubist sense.

[Rz 12] Lady Welby's and Wittgenstein's language analyses aimed to account for emergence of meaning and language. They contribute to observe complex levels of signifying, expressive and communicative processes, without reducing them to the mere status of information transmission and message exchange in a dualistic sense. Each of these authors calls our attention to the importance for signifying processes of iconism, of otherness, and of relations among signs beyond systemic restrictions. This also helps evidence the dialectical-dialogic nature of interpretive and translation processes in the relation between the categories of «unity» and «distinction» or between the «centripetal forces» and «centrifugal forces» operating in language, as Bakhtin did put it in 1975. They so focus on monologism *and* polylogism, monolingualism *and* plurilingualism as emerging from respectively a logic of identity and a logic of otherness. Knowledge and truth thus appear as open to investigation and subject to modification in the continuous work of adapting to and generating new contexts and communicative practices. All this seems to be inherent in the Cubist understanding of «activity».

[Rz 13] In this light, painting is not an activity that depicts solely fragments of a so-called concrete reality. This becomes clear from perceiving the intense psychological engagement, which occurs when for example Cézanne shapes his canvasses with strong self-criticism:

«Cézanne at his easel, painting, viewing the countryside: He was truly alone to the world, ardent, focused (. . .) and sometimes he would abruptly quit the site dispirited, abandoning his canvas on a rock or in the grass» and Languier witnesses 1925: «I saw several (abandoned canvasses) under the trees of the Château Noir». ([26] 83)

[Rz 14] A painter's activity is thus at distance to the heroic act of autonomously representing an object or a landscape by means of painting. We, hundred years later, know and perhaps understand what a painter like Cézanne moved: he can only be creative in the context of a culture and its many forms of interactivity. And a neurological counterpart is how we do not only see with our eyes but with our brain as well, which means: solely as a complete person. Perception is a total engagement and therefore a matter of conceptualization, of mind, of rhythm. Cubist painters and their predecessors like Cézanne knew this by experience long before such socio-philosophical and neurological insights shaped modern life.

[Rz 15] Cézanne's behavior and his paintings are both fragments of one and the same complexity, which we call «interactivity». The word underlines how a person's activity is only realized in an encompassing structure. Cubist artists experienced this and understood their art as an intense

activity, an activity in its own right, and far from any exalted individualism of any genius! This feeling of experiencing a high tide of activity is also the ground for often sophisticated theoretical explanations of their artwork, as is the case with Braque, Gris, Gleizes or Metzinger – all of them fascinated with perception and the visible world around them. They encountered the challenge to expose the truth of the human mind, a truth about the world without idealist connotations. In fact, one could suggest that this Cubist attitude encountered principles later understood in *structuralism*, a cultural and philosophical mainstream of the mid-twentieth century. In structuralism, activity was the key to understanding reality as an active process and not just an idea to apply. Roland Barthes describes 1964 how

«the structural mind gets hold of something given, dissects it, reduces it to its component parts and puts these parts together again – this seems to be little, but this little is, observed from another viewpoint, decisive (...) creation or reflection are here not a reprint of the original world but a real creation of a world, which resembles the first, does not copy or reprint it, but makes that first understandable.» ([4] 191)

[Rz 16] Painting is an event that unfolds in many fragments of reality, with a different function, surface, line, circle, volume, color, sphere or mood. What is more: all have an equal chance to become substance in the act of painting as a specific activity. *A painter creates in segments of interactivity*. Matisse expressed this, when writing

For me, the subject of a picture and its background have the same value, or to put it more clearly, there is no principal feature, only the pattern is important. The picture is formed by the combination of surfaces, differently colored, which results in the creation of an «expression». In the same way that in a musical harmony each note is a part of the whole, so I wished each color to have a contributory value. A picture is the co-ordination of controlled rhythms. ([16] 113)

[Rz 17] Beware: not philosophers or scientists have shown us those important changes in our consciousness of «all there is» but painters did – those who were at work in the frontline of recreation, reproduction, repetition, reconsideration and their opposites. Cubist painters were not philosophers, but they achieved insights of important philosophical and above all semiotic relevance for their view on life. Are there lessons to learn and conclusions to draw for lawyers and legal thinking? Semiotic relevance – it is an expression easy to formulate but difficult to explain and even more difficult to prove ([11] 195f).

[Rz 18] This relevance unfolds at various levels: (a) We mention first the Peircean call to be aware of how all reality is always involved in a process of achieving *sign value*. (b) Then there is this relevance in understanding the basic structures of human *activity*. (c) That activity, whatever character it has, culminates in the dynamics of *meaning making* – itself an apogee of semiotics. (d) It occurs that an understanding of *painting as activity* in a Cubist style requires a strict *equivalence* of all segments or elements that compose the painting. (e) This goes to the semiotic understanding of *meaning* in general, when meaning seems to be the result of a human activity directed towards the *order* of things rather than to any *essence* they should possess. (f) The question remains whether those ideas, which unfold in a specific style of painting and through that painting achieve general importance, will ever become relevant for legal thinking and the activity of lawyers beyond the cubist scheme of thought. (g) Cubism made clear that issues of human consciousness are active beyond philosophical representationalism or idealism. Cubism showed that a creative activity is always *interactivity* and thus focuses *meaning as a matter of order*.

4 Signs and Names

[Rz 19] The Cubist predominance regarding *meaning* and *order* forms the background for the suggestion that where painters create *signs*, lawyers create *names*. Signs and names are interchangeable in daily life, but their discourses differ so that it becomes sometimes a serious problem to see their common features in language and understanding. To further unfold this difference between meaning and order, we have to consider a very theoretical observation. Meaning and value of a word can only be understood through a determination of its place in a context, i.e. in a linguistic milieu. Most types of legal work show the truth and value of this observation. There is for instance no breach of contract without a specifically legal understanding and interpretation of social reciprocity in relations. Take any activity of a contract lawyer as an example: that activity has the acceptance of social and contextual character as a precondition, even if it is suggested that the expression «breach» has a meaning beyond legal discourse. Any text has, theoretically spoken, contextual features – that is a semiotic conclusion in its own right. And this contextual character of texts relates to means of ordering linguistic elements. It is in this semiotic process that texts create meaning. They thus unveil the existence of a textual topology and its basic elements ([11] 196).

[Rz 20] Read for example judgments of the US Supreme Court, or the ECJ, and find scientific and other non-legal texts function in these decision texts. They appear as one single coherent message packed in a limited number of sentences, as if they are all on their way to become a slogan. But they are not meant to become a slogan! *Names* of cases and doctrines become *signs* of complex social issues: Abortion in the US = *Roe v Wade* (1973), Death penalty in the US = Eight Amendment or *Furman v Georgia* (1972), Relations between national EU systems = *Van Gend & Loos* (1963), Liability for EU citizens = *Francovich* (ECJ 1991).

[Rz 21] Those are only four of many names in law, which are a sign for complex social and legal situations and a sign in discourses of daily reality as well. This naming process may not be unique for legal science, but it is a tight, strong and generally recognized force of (inter) activity in legal discourse effective in society, and by no means an innocent form of knowledge. *Names are names for..., and expressed as words*. All naming includes reference, and the expressiveness of names entails the use of words. These are building blocks to approach law as a semiomorphic discourse ([11] 207).

[Rz 22] Three conditions are of interest in relation with leading Cubist ideas: (1) a speaker should *order* words appropriately in a language sentence, (2) the sequence of expressions should be *meaningful* and not be absurd or contradictory and (3) the speaker should through his speech honor his or her knowledge of the *grammar* and its logic. More than grammar, the *order* of signs and their *mutual* relations give birth to an appropriate use and interpretation of signs. Some branches of modern medicine provide a good example for the huge influence of visual semiotics in the practices of science. There is hardly any branch of medical knowledge or practical care without image making, and Medical Schools excel in the development of cyberspace- and computer knowledge. One could say that there is no clinical picture in medicine, psychiatry or neurology without computer interference! The strong intertwining of law and medicine makes legal sciences go the same way, and demonstrates the global and interdisciplinary scope of visual semiotics. ([5] 100, 153)

[Rz 23] To exemplify this approach with a legal case, we refer to the US criminal case *Harrington v. State of Iowa*, 2003 (659N.W.2d 509). ([7] 223) *Identity* became a groundbreaking semiotic issue

in law and medicine. This case is decided on «information about what the person has stored in his brain». A chain of signs is involved, which is made visual by means of virtual representation: from «brain-function» to «brain-storage» and via «brain-scan» to «brain-fingerprint», for which the case became famous. A long series of signs and meanings took part in those discourses. Central is a particular *sign*, which functioned as *name*: «brain» means scanned brain and «fingerprint» means legal discourse! In other words: «Brain» does not mean brain, and «Fingerprint» does not mean fingerprint. The brain is not the issue here, but rather the brain subjected to scanning procedures, so that «the brain» means «the scanned brain» or more precise: «the images of a brain scan». The chain of signs/names in the Harrington case shows inter-disciplinarity in law and inter-discursivity in the coherence of law and medicine.

[Rz 24] Signs are read with binary information units, which have to be visualized and thus lead to other signs, images, imaged functions or storage processes which altogether complete the operational «Brain Fingerprint». The completeness of the *signs* mirrors the *Name* «Fingerprint» as a trustworthy component of legal discourse. Signs are in this technique translated into visualized data in the sense of standard images, which activate visual semiotics in human communication. Courts who have a picture in hand, can now say: «Look, that's her!! It is undoubtedly him!!» The intertwining of discourses is only effective where various semiotic elements are coupled, and the discourses are reflexive, that is: open to meanings and names that belong to other discourses. The Name «Brain Fingerprint» demonstrates that coupling. Neither component represents what is to be expected when one uses ordinary language. Fingerprints are not fingerprints in the daily sense of the word, for instance when police investigations require information about an identity or when tourists enter the US. The word «fingerprint» is the visual certainty of identity through test results of an individual subject.

[Rz 25] A coupling of meanings makes us consider in this case how «fingerprint» is here understood *a token in criminal law* that intertwined with *brain scan techniques*. A fingerprint *names* a visualized identity, whereas a scan delivers the images that sustain that identity at hand. The role division between painter and lawyer pertaining to *signs* created in visual semiotics and *names* in predominantly literary semiotics is by no means watertight; the *Harrington Case* shows clearly the importance of visual semiotics in legal decision-making.

5 Reflective Painting

[Rz 26] A «brute» or «wild» artist, who, as some think, paints without any reflection, does not exist. Cubism surpasses this romantic image of artistic activity that would unfold beyond any criterion of human nature. The moving hand or the wandering eye does not activate any form of orientation in the world beyond precision and consciousness; each stroke on the canvas is premeditated. One must say, there is no «art brute» (fr.) or «brute art» (engl.), and certainly no painting without thorough consideration. «Art brute» may be a style of painting but by no means determine a painter's character. A tension between painting and reflection does, however, exist. One often encounters the idea that painting is a form of reflection, which is limited to pictorial means. Gertrude Stein, literary contemporary of many cubist painters such as Picasso, Braque and Gris, inspired by automatic writing («écriture automatique») and its psychological features reports how she did not talk to painters about what they painted, because «painters real painters never really ever talk about that». Do they remain silent because their pictorial activity unfolds at distance to any reflection? Apollinaire once stated about the art of Juan Gris, one of the founding

painters of Cubism:

«This is the man who has been thinking thoroughly about everything modern, the painter who searches new connections between everything, because he wants to draw and paint purely new forms... < and > ... the art of Juan Gris is innermost intellectual art...». ([1] 25)

[Rz 27] When considering reflection in painting and art in general, it would be of interest to keep in mind that many artists underlined how they themselves did not completely understand all dimensions of their own work. If that is the case for the work of art, it could also be important for the philosophy implied in that work. Artists should have a certain liberty to use philosophical arguments when talking about their work. Alfred Barr recalls dialogues with Picasso and writes

... art does not enter into philosophic absolutism. If cubism is as art of transition I am sure that the only thing that will come out of it is another form of cubism. Mathematics, trigonometry, chemistry, psychoanalysis, music and whatnot, have been related to cubism to give it an easier interpretation. All this has been pure literature, not to say nonsense, which brought bad result, blinding people with theories. Cubism has kept itself within the limits and limitations of painting, never pretending to go beyond it. Drawing, design and color are understood and practiced in all other schools. Our subjects might be different, as we have introduced into painting objects and forms that were formerly ignored. We have kept our eyes open to our surroundings, and also our brains. We give to form and color all their individual significance, as far as we can see it; in our subjects, we keep the joy of discovery, the pleasure of the unexpected; our subject itself must be a source of interest. But of what use it is to say what we do when everybody can see it if he wants to? ([3] 271; [2])

[Rz 28] It is clear that cubism is an important movement in the cultural history of the beginning 20th century. Juan Gris writes: «Le cubisme doit avoir forcement une correlation avec toutes les manifestations de la pensée contemporaine...» [Cubism must have a correlation with all manifestations of contemporary thought] Kahnweiler suggests that cubism around 1915 shows an important breach and reorientation in West-European art and culture.

[Rz 29] *A word painted as raw material on a Braque canvas is a semiotic novum*, just as Proust highlighted how his prose approximated the same type of complex paintings. Where a word represents neither grammar nor discourse and strives for a newly found independence in the realm of expressiveness, artistic action and scientific reflection tie together and thus change art and linguistic communication. Marcel Proust concludes, that

the exclusive use of the Chinese scale, cubism, futurism or what you will, differs outrageously from all that occurred before. (21] 91)

[Rz 30] Cubism became famous for its consistent search for the defining units of a pictorial composition, an issue that was also central for structuralism and its manifestations on the level of sciences, arts and philosophy. It is widely known that cubist *painting* took the lead, with Picasso, Juan Gris, Georges Braque, and Delaunay, Duchamp, Léger, Picabia, Gleizes or Metzinger, although interesting developments in literature, music, architecture or psychoanalysis also took place. The recent Cézanne expositions and retrospectives in London, Paris and the US (in particular the Philadelphia 2009 exposition *Cézanne and Beyond*) made clear how he was able to inspire painters with the surprising surface structures of his canvasses. Cézanne defining unit – is it his life, his painting, his view, his temperament, his ideas and views on life? One question remains: all this is based on or refers to *representation*. Is there a painting unit, a determinable unit that exists *beyond* representation or reference? This is a moving consideration about change. Cézanne knew the implications of change when he lived a full life of painting!

6 Cézanne's Brushstrokes

[Rz 31] Could it be, that the life of Cézanne, his greatness and exceptional position in art history, relate to his unique and perhaps revolutionary appreciation of the basic unit of a canvas, the constituting brushstroke? This question, more or less of philosophical nature, is central in the keynote essay of Richard Shiff in the 2009 Philadelphia catalogue, which Robert Herbert described in his 2009 essay as «the catalogue's star turn» ([18] 21). Shiff analyses the *diverse meanings of Cézanne painted marks* – these meanings are in particular at issue in his brushstrokes. These are in hindsight Cézanne's basic units, which form a decisive moment in the development of modern painting and are also of utmost importance to a philosophy of art and modern culture. Herbert mentions Shiff's analysis of Monet's marks as compared to Cézanne: Monet's brush strokes are suggesting a separateness, but that suggestion diminishes when shape and direction change with each imagined object. Where Monet remained subordinated to the illusion of representations to be painted, Cézanne's strokes *can seem autonomous*, Herbert specifies.

[Rz 32] One should understand the importance of this conclusion. It is because of this observation that *one must grant Cézanne priority over Picasso as the initiator of Cubism*. Picasso's path breaking *Demoiselles d'Avignon* would not have been conceived without Cézanne's various groups of bathers as an example – canvasses which Cézanne painted with autonomous strokes but yet under the spell of purely representing his subject. Picasso's words from 1963 show that clearly: «He was my one and only master!» ([11] 217ff.) There are probably two levels of understanding the essence of Cézanne's work: one pertains to the technicalities of the foundational unit: the brush stroke, in the context of his paintings. The other pertains to the much-debated character of the artist and his view on life. Both show, however, that Cézanne's development of cubist principles and their semiotic implications *do not lead to a visual semiotics*, but rather *remains an element of semiotics in general*.

[Rz 33] This said, we concentrate on how the first level of understanding interests when we grasp the semiotics of Cubism, the second when we focus the broader context of history and philosophy of Cubism ([8], [9]). Consider the technical features of Cézanne's brushstrokes. Their autonomy is not *a symbol within the painting* but rather *a renewal of the entire activity called painting*. Herbert quotes Shiff who wrote 1984 about *Madame Cézanne in Blue*:

(...) to inspect the painting mark by mark (the way it came into being) is to see numerous Cézanne motifs emerge – continuities and analogies of form involving adjacent parts of the image. In the portrait, segmented strokes that define the wooden sideboard turn a gentle corner, change color, and become the shoulder of the figure's dress; elements of the collar connect to a lozenge from the wallpaper. Such effects are to be expected in compositional painting but not to the degree that they diffuse the spatial illusion, as they do here. We imagine Cézanne concentrating on the painted surface to such an extent that he could not resist moving with its movement once the basic image had established a few points of compositional reference. [27]

[Rz 34] The viewer is impressed by the dynamics of semiotic nature in the painting, whereby brushstrokes embody feelings beyond the process of reference. In Cézanne's case, these strokes form an encompassing activity and by no means just a method. His strokes and their motives, so passionately appreciated by friends and colleagues

(...) could not be ... regarded solely as a concept or an ideal: it was instead a movement associated with a particular experience ... as this experience played out in an active process of painting. Although sensation needed to catch up with itself, it would be wrong to expect that a stable image

would result if it did, for living, human sensation is not divisible into moments. It merely feels like an instant or moment, that is, it feels momentary, transient, changing. . . . What Cézanne understood of the changing aspect of Mont Sainte-Victoire he understood of apples and human figures. . . . Look at (a) figure's hands. . . . Those hands are moving, but by what source of energy? [26]

[Rz 35] Those strokes, each being an independent corpus of/in painting, seem the fruit of passionate precision. They require perfection on their own, self-sufficiency, fullness. The stroke *is* what it is: it is, in context, without reference. Visible is the painter's ultimate activity, so that a painting of Cézanne appears a composition of self-sufficient strokes. That is precisely the cubist drive and the major principle that reinforces the dynamics of analysis and synthesis in art. One could in addition interrogate Cézanne about the precise character of reference he wants to achieve with each of his strokes. Confront him with the question whether an absence of reference in the context of a painting is possible at all? If reference in a stroke is absent, we should tell him, then the meaning and sense of brushstrokes in the painting are a matter of each stroke independently and thus without reference to other strokes. Not the fluidity of strokes determines the situation in that case but rather the fact that the strokes (the basic elements of painting) are *ordered* within the identifiable complex we call a painting, a canvas or a painter's achievement. The painting may refer to an event, a situation or a subject, but the strokes, the constitutive elements of the painting, do not!

[Rz 36] This is the riddle of cubist painting: strokes contribute to representation without representing themselves! That riddle is semiotically relevant. *Brushstrokes are signs belonging to a painting but exist beyond reference.* They are signs, which only receive a referential meaning through their belonging to a totality – the painting itself. In other words, they are signs without manifesting Peirce's triadic structure, being «sign-object-interpretant». Did not Peirce's most quoted definition around 1897 say: «a sign, or representamen, is something which stands to somebody for something in some respect or capacity!» ([25] 2.228) A sign is thus a single basic element of semiosis and all imaginable other triads of greater complexity are reducible to this basic triad. Are cubist paintings an exception and do they escape reference to find it solely in its *plural*, its *order* within the painting, its *nexus*? The problem of order has overwhelming importance, and reference seems to come on the basis of *order* rather than of *parallels*, *likeliness* or simple *repetition*! That idea fits Peirce when writing earlier (c. 1873) «a sign has such a relation to an object as to bring the two latter into a certain relation within one another». The sign became sign in the painting through the *order* of strokes! A philosophy of Cubism is in essence a philosophy of order. One could understand this in Peircean terminology, saying that in Cubist paintings the brushstroke is only a sign if one stroke within the painting is an *index* for another. No wonder, that Shiff concludes how Cézanne's marks «constructed the picture as a tactile action» ([26] 64), an action that Picasso and others adopted in various manners.

[Rz 37] Cézanne, not unlike Picasso and several of his friends, [24] were widely admired because they displayed a unity of life and work. «A general theory of human consciousness, a theory of life, would be needed to determine the relation of Cézanne's manner of painting to his lived experience», Shiff writes in that same context. Maurice Merleau-Ponty wrote in a 1948 essay *Le doute de Cézanne*: «it is true that the life of an author does not teach us anything, but if we could learn to read him, everything could be found because of the openness of the work». The same essay with the same subject, however, reads: «The significance of his work cannot be determined by his life» and referring to Greco, he underlined Cézanne's «freedom of the solitaire» which showed «a morbid constitution», «schizoid like El Greco». ([22] 18ff.) So there is hardly any uniformity

in the perception of life and work as an issue in itself, as generally exposed in biographies and theories about pictorial art.

7 Tyche

[Rz 38] In the catalogue of the 2009 Philadelphia exhibition, Shiff undertakes an exceptional attempt to explain the dynamics of Cézanne's marker/stroke technique by means of the adjective *tychic* and using the noun *tychism* the way Peirce proposed in 1892. In doing so, he constructs a bridge between Cubism's accents on *order*, the way order comes into existence and the philosophy of the problem of order. A variety of philosophical considerations on Cubism in general pertain to semiotic dimensions catching the eye. *Tyche* is the Goddess of fortune, of chance, providence or fate, and she determines how an *order of things* emerges. Brushstrokes in their order do not refer among each other, but they are orderly in Tyche's eye. It will fascinate lawyers that the same Goddess was understood as *the constellation virgo*, the *Dike* who took care of Justice ([11] 217f).

[Rz 39] Tyche encounters us with vision, feeling and spontaneity in the case of Cézanne. She is for Peirce important in the context of understanding his personal fate and of his evolutionary cosmology, which colors his lifelong interest in logic. His own biography leads him to a semiotic interpretation of human consciousness, with as a major conclusion that the self (indicating that consciousness) is characterized by itself as a self. ([25] 5.314) One should not misunderstand this: the characterization is a *structure*, an *order* in itself, and the self itself is for itself a *sign*. This structural self-understanding is based on insight in order tout court that expands itself in the form of accelerating reasonableness. ([25] Vol. 5.3, 433.) Peirce is thus drafting a theory of identity focusing cosmic dimensions of human life. Cubist experiences are not alien to this problem: Tyche brings meaning and order together; she inspired Peirce to find the traces of how this particular constellation emerges. Yes, one could indeed nominate Tyche as the Goddess of Semiotics! ([10] 224)

[Rz 40] Philosophical considerations have accompanied cubist concepts in almost all regards, in particular in psychoanalysis and literature – sometimes the two intermingled in explanations of for instance the literary prose of Gertrud Stein or the poetic approaches of Ezra Pound or T.S.Eliot, not to mention French writers such as Appolinaire, Mallarmé or Rimbaud. Many commentaries from philosophers such as Gehlen and Gadamer focus Cubist principles; they also mention Peirce's semiotics in the same context as well as the psychoanalytical approach of Jacques Lacan and his insights in the emergence of a subject's identity. A reference to German Neo-Kantianism as a foundation for Cubist approaches to reality completes this range.

[Rz 41] The biography of Daniel-Henry Kahnweiler, art dealer and privileged witness/contributor to Cubist art who studied philosophy in Germany and Switzerland, focuses like all his fellow students in those days on the philosophy of Kant and Neo-kantianism. His idea about *Cubism as conceptual art of painting* (*peinture conceptuelle*) became widely discussed. It has a philosophical foundation in Kantian thoughts in so far as it honors epistemological and scientific criteria instead of the traditional psychological or socio-historical approaches. The idea of *conceptual* art can be expanded and understood as a particular *thought process*. An artist's thoughts put the notion of a pre-existing objective reality in perspective; an artist's social function is to unmask that notion, so that art tackles as it were a central philosophical problem: the problem of «the reality of all that is». We encounter again the Peircean notion that «all there is» can become a sign. This leads

to ultimately understand reality as the result of a continuous activity of the mind. Philosophy and art coordinate in grasping the reality concept, so that the age-old question about *truth* relates to both. Kantianism, Lebensphilosophie, [philosophy of life], Existentialism and Phenomenology underline the general idea initiated by Cubist art, that reality is created with the eye, the hand, the human mind and result in a continuum of expression. One could locate the dynamics of visual semiotics in this continuum. Kahnweiler understood its semiotic relevance:

since the artist is no longer obliged to mirror or imitate the visible world around us (...) unfolds the possibility to create a structure of signs, which emerge from the work of art itself and yet signifies the world around us. That is what the Cubist artists experienced. ([19] 726)

[Rz 42] How challenging to propose that an artist can articulate the essences of a work of art and *at the same time within the same reach of activity* signify reality: a truly semiotic challenge!

[Rz 43] Hans-Georg Gadamer, famous for his stimuli to develop new forms of hermeneutics in his 1960 *Wahrheit und Methode* [Truth and Method] wrote important essays on art, painting and Cubism. In view of Cézanne's brushstrokes, we highlight only one point in Gadamer's discussion with Arnold Gehlen about conceptual painting and Gehlen's book *Zeit-Bilder*. [17] That book suggests that Cubism is founded in a Neo-kantian philosophy. Objects and reality are declared to emerge from human thought processes so that the Kantian categories of space and time are purely conceptual and thus products of the mind. Gadamer replies with strong philosophical arguments, that the

cubist facet style should not be understood and presented as the practical application of Husserl's idea of shading or fine distinction of the perception object! It would be absurd to suggest that Cubism highlights the synthesis of apperception and that an anything but revolutionary Neo-kantian philosophy, just before fading away, would have caused the greatest revolution in European painting since Giotto. ([13] 220)

[Rz 44] Gadamer considers two different powerful features in the originality of Cubism. One is the *constructivist* component, which is widely perceived and lauded, and the other a modification of that approach through safeguarding a maximal transparency of the Cubist technique. The conceptual character of Cubist painting does not, as Gehlen suggests, advance a scientific approach in the art of painting, but rather a purely spiritual use of the elementary units of the pictorial composition. The latter means also that any imitation, mirroring or reference to any substance other than itself, is avoided. Focus on sorting out the basic unit of painting was highlighted in the work of Cézanne. Any philosophy of Cubism excels in essentially being a philosophy of *order* pertaining to signs and pictorial units as the basic materials for *ordering* as an artistic activity. [9]

8 Visual Semiotics, Law

[Rz 45] All these remarks stem from a wealth of philosophical considerations about Cubist art. They could, however, be presented with more precision, expanded and deepened for instance into the logic and semiotics of Peirce, the Lacanian vision of human growth, Gadamer's hermeneutics at work in pictorial art and above all, Cubist achievements as a substantial contribution to contemporary occidental culture. One question would nevertheless remain a central issue in all those contexts: the question repeatedly posed, what these philosophies and their inherent semiotic notions have to do with legal thought formation and lawyer's activities? It is not possible to indicate any straightforward influence of one discourse or activity on the other. In other words, how can

actors in legal discourse acquire insight in the fact that their texts and reasoning was shaped by iconic revolutions (such as cubism)? Although not directly focusing rules, norms or legal logic, the question touches also preconditions of legal meaning and expressiveness. What has a way of presenting reality as perceived by an artist – as a specialist in perception, perhaps more so than any lawyer – to do with legal judgment? That is a truly challenging question! The shift from *verbal* to *visual* expressiveness and the completion of *words* by *images* is decisive in modern law and legal semiotics.

[Rz 46] Changes of meaning include changes of material elements available for articulation, which perform in terms of communication semiotics. Does verbal expressiveness suffice to understand reality legal discourse has in mind? Or should a cubist painting inspire lawyers to continuously reconsider their proper articulation? Consider that law's communicative character changed under the influence of the completion of words by images, so that communication in law is not restricted to words or other linguistic entities. The slogan that «an image is worth a thousand words» has indeed communicative weight. The function of visual legal semiotics, based on the integration of word and image, challenges modern law and widens its verbal traditions. Cubist paintings, one could say, anticipate today's electronic communication. «Finally, ... reality depends on the ultimate decision of the community» Peirce noticed ([25] 5. 317), and he could have added the suggestion that community also means culture! Although law presents itself in a variety of images in Courts and other public places, there is no visual component of legal thought formation, or of legal statutes, science or literature that fulfils a decisive function. All these notions inspire three coherent but general conclusions pertaining to the theme:

- (1) There is *no semiotics separated from cultural values, styles, norms and ideas* – cubism is an excellent example of *intertwining semiotics*, which always plays a role in cultural complexities.
- (2) There is *no fine line to maintain between literary and visual semiotics*: Cubism has demonstrated via the surfaces of its paintings how literary motives can become visual, carrying important semiotic consequences (Braque and others).
- (3) What is *important for art is also important for law*: in both discourses is a central place for the functioning image of a human being. Peirce and Lacan, Cézanne and Picasso, Juan Gris and Gertrud Stein all paid attention to this motive. The meaning of it must be considered seriously in view of the coherences between literary and visual semiotics.
- (4) Many aspects of this summary conclusion underline the semiotic importance of *rhetoric* in law. The search for basic and deciding units in legal discourse fascinates in *communication processes* where emancipated participants can make decisions with legal consequences.

[Rz 47] Peirce's idea that the human subject is an *order* in itself, and the self itself is for itself a *sign*, is a free basis for an observation that combines literary and visual semiotics, a legally correct realization of elaborated *citizen participation* as explored today in the legal system of the European Union [6]. Is not the ultimate goal of legal rhetoric, sustained by legal semiotics, to create an emancipated opinion, combining visual and verbal elements of discourse? To worship Tyche, one needs such an emancipated opinion!

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