

# A GODDESS FOR SEMIOTICS OF LAW AND LEGAL DISCOURSE

Jan M. Broekman \*

## ABSTRACT

The work of the great American philosopher Charles Sanders Peirce (1839-1914) becomes more and more appreciated beyond the boundaries of his pragmatism, a philosophical mainstream he founded in the early 20<sup>th</sup> century. This essay is inspired by five points of interest, all of which focus on law and legal discourse. *Firstly*, one should acknowledge that his proposal pertaining to a general theory of signs, which he called 'semeiotics' around 1860, leads to an untraditional and in-depth understanding of legal discourse: in essence, of law as a system of specific meanings and signs. Semiotics in general became a substantial part of his 'evolutionary cosmology,' an all-embracing approach to tackle classical and modern philosophical issues. *Secondly*, his anthropological intuition based on semiotics, (concentrated in the formula 'man is a sign') became important for our understanding of a human subject's position in law, as author of a legal discourse as well as an individual subjected to law. *Thirdly*, the tensions between chance and continuity in legal discourse are of focal interest for the creation of legal meaning in law's practices. Novelty, Peirce suggested in this context, occurs by the grace of chance rather than of continuity and fixed traditions. *Fourthly*, Roberta Kevelson (1931-1998) explored and expanded the field of legal semiotics on the basis of the works of Peirce. In doing so, she established an American tradition of legal semiotics distinct from a European tradition, which related more to linguists, psychologists and philosophers embracing structuralism. *Fifthly*, Tyche, the Ancient Goddess of fate and fortune, is because of Peirce's references more at home in the US legal semiotic tradition. Her fame and influence reaches beyond law and became supported by recent archeological discoveries, publications and exhibitions, which not only provide information about her background, but also underline her possible influence on modern legal thinking.

## FACING TYCHE

Two intertwining features form the basis of today's semiotics of law, especially in the case of US semiotics. The *first* can be found in the work of the great American philosopher Charles Sanders Peirce (1839-1914), who developed in the late 1860's a general theory of signs, called semeiotics, in which he forwarded the view that 'man is a sign'—an observation immediately relevant in law and legal discourse. The *second* is in the use of the expressions 'word', 'community' and 'discourse'.

Peirce's intriguing aphorism was for him an element of a more encompassing theory called 'evolutionary cosmology' in which law seems to be almost naturally incorporated. It supports Peirce's idea that all knowledge results from a process of inference, that is from presumptions, deductions and conclusions, so that signs are always involved in epistemological questions, as also in issues of legal theory. A basic

---

\* Distinguished Visiting Professor of Law, Penn State University, Dickinson School of Law.  
>jmb56@dsl.psu.edu<;

concern in Peirce's philosophy is in plying *chance* together with *continuity*. The togetherness of these two is omnipresent in his thoughts. We cannot live, think and know without continuity, he says, which means that past ideas must be present in every movement of our mind, although in often totally different forms. However, novelty exists by the grace of chance rather than of continuity! The tension between these two took almost the philosopher's entire lifetime, who wrote as early as in 1891: "The next step in the study of cosmology must be to examine the general law of mental action. In doing this, I shall for the time drop my tychism out of view, in order to allow a free and independent expansion to another conception... I mean the idea of continuity." Tyche guided Peirce's fascination with chance and continuity. He looks her in the face when he concludes "...that there is but one law of mind, namely, that ideas tend to spread continuously and to affect certain others which stand to them in a peculiar relation of affectibility. In this spreading they lose intensity, and especially the power of affecting others, but gain generality and become welded with other ideas."<sup>1</sup>

A majority of philosophers, linguists, social scientists, and anthropologists on both sides of the Atlantic use and explore the expressions 'word', 'community' and 'discourse' and weigh their consequences. This unites Peirce with those who contributed to 'symbolic interactionism' and others such as Lévi Strauss, Greimas, Kristeva, Lacan, Barthes or Eco —to mention only a few names. Peirce wrote already around 1903 "...it is sufficient to say that there is no element whatever of man's consciousness which has not something corresponding to it in the word... the word or sign, which man uses, *is* the man himself. For, as the fact that every thought is a sign, taken in conjunction with the fact that life is a train of thought, proves that man is a sign..." He noted circa 1892, "All communication from mind to mind is through continuity of being. A man is capable of having assigned to him a *rôle* in the drama of creation, and so far as he loses himself in that *rôle*..."<sup>2</sup> This role only unfolds in a community: "A man has consciousness; a word has not, ...our thought is an index for itself of itself on the ground of a complete identity with itself. But so is any word or indeed any thing, so that this constitutes no difference between the word and the man."

Word and man depend on their community in which they find support for their articulation: "... reality depends on the ultimate decision of the community; so thought is what it is, only by virtue of its addressing a future thought which is in its value as thought identical with it... so that it has only a potential existence, dependent on the future thought of the community."<sup>3</sup>

Word and community, both understood as signs of man's essence, lead to the contemporary uses of the concept "discourse." A discourse is, as Morris explained

---

<sup>1</sup> Ch. S. Peirce: (1931-1935, Ed.) *The Collected Papers of Charles Sanders Pierce* Vols I – VI, Ed. Charles Hartshorne and Paul Weiss, Cambridge Ma, Harvard University Press, and -id.- (1958, Ed.) *The Collected Papers of Charles Sanders Pierce* Vols VII – VIII, Ed. Arthur W. Burks, Cambridge Ma, Harvard University Press, Vol. VI, 103, 104.

<sup>2</sup> Ch. S. Peirce: See (1), Vol. V, 314; Vol. VII, 572.

<sup>3</sup> Ch. S. Peirce: See (1), Vol. VII, 585, Vol. V, 311.

already in the 30ties of the 20<sup>th</sup> century<sup>4</sup> on the one hand a coherent series of articulations through the use of a natural-, and on the other through the use of an artificial, language. Legal articulations are a unique case. Legal discourse is an artificial language discourse made through the management of natural language components. This unique combination of artificiality and naturalness forms a philosophical challenge that semioticians as well as philosophers of law have to face. It is no surprise that the Ancient Greek Goddess is referred to when this powerful combination plays a role in semiotics.

“Obsessed with fortune is *possessed* by fate; and *obsessed* with fate is *possessed* by fortune”, the Greek Goddess Tyche tells us with a smile. She knows how fate and fortune are both powerful discourses loaded with a frantic explanatory energy to envision the many courses of events in human life. Our classification of those events, bearing such names as fate or fortune, depends upon the cultural asymptotes we use for their articulation. *Chance*, however, plays a dominant role in our articulations and consequently in all our linguistic achievements—in particular when we evoke reality as a most natural component of our discourses. Without chance, no change, no growth, no newness or understanding by means of an open discourse. Is Fate Growth? We hesitate to admit that and we do not always understand or articulate the issue properly. The same is true for Fortune, although perhaps different. Indeed, difference is in the soul of the Goddess; and schism her source of energy because none of her actions are without destructiveness. That is also the reason for her deification: her schism is too far from articulate discourse to have it function in a direct manner. The outcry for a sign shouts down her incomprehensible schism. “Give us a sign...” is a well-known demand that halts our articulation of the flux of events—be they fateful or fortunate.

## TYCHE

Do we have similar feelings of obsession with Fortune as the ancient Greeks had during the IV century B.C. and their entire Hellenistic period? The question evokes another riddle: from the time when the statue of Tyche in Antioch was erected around 300 B.C, another statue was erected approximately 500 years later, in the very distant Dura-Europos. Such considerations led to the 1994 exhibition in the Yale University Art Gallery, organized by Suzan Matheson and her staff, who found support in J.J. Pollitt’s 1986 publication *Art in the Hellenistic Age*, in which Tyche was mentioned as one of the driving forces in Hellenistic public life and thinking.<sup>5</sup> The exhibition,

<sup>4</sup> Ch. Morris: *Signs, Language and Behavior*, New York 1955[2], p. 130, and: *Signification and Significance*, Cambridge MIT, 1964, p. 60 f.

<sup>5</sup>Susan B. Matheson [c.s.]: *An Obsession with Fortune: Tyche in Greek and Roman Art*. Yale University Art Gallery, 1994. J.J.Pollitt: *Art in the Hellenistic Age*, Cambridge UP, 1986, -idem-: *An Obsession with Fortune*, in: Yale University Art Gallery, 1994, p. 13 ff. See also: Lisa R. Brody & Gail L. Hoffman: *Dura Europos. Crossroads of Antiquity*. Exhibition at the McMullen Museum of Art, Boston College, 2011. See also: Lucinda Dirven: *The Palmyrenes of Dura-Europos*, Brill, Leiden etc 1999, p. 103.

entitled *An Obsession with Fortune*, shows us how the Greek Goddess and her Roman appearance Fortuna linked occurrences of equivocal fortune to Deity. The same instability in human affairs and courses of history is essentially ours. However, we have no Goddess any longer to blame for inconsistent governance or unfortunate decisions. So we are left to only blame presidents and politicians who we anyway consider as tokens of inconsistency or coins in social commerce.

In other words, the Greeks in the fourth century B.C. deified chance, fate and fortune, instead of entrusting them to the hands of politicians. No wonder that the relations between Tyche and Law seem close. We gain knowledge from the Yale exhibition and its catalogue with regard to many aspects of this relationship, especially to how long it took before the deification of Tyche occurred. The influences of city- and political life in an individual's fortune are important aspects of public life around Tyche. Remarkably enough, all these themes also play a role in the philosophy of Charles Sanders Peirce—not in his *pragmatism*, but in his *semiotics*, the science of signs and meanings. He focuses on how semiotics unveils a coherent process of *meaning-making* in law (*Tuchios* [Gr]=maker)—a theme particularly studied in the legal semiotics of Roberta Kevelson.

Polybios (200-118) is the Greek historian and politician who gave in his *Histories* a famous account of the period between 220 and 146 B.C., a text that inspired Montesquieu's *Spirit of the Laws* which in its turn stirred the *American Constitution*. He described Tyche as the one “who makes no treaties with this human life of ours, who devises all sorts of new twists to confound our calculations, and who shows her power in completely unexpected ways...”. Polybios based his writing on his experiences with history and the nature of man rather than on the factual features of the Goddess. How much experience, how many unexplainable life occurrences, how much of a lifetime do these words require before they can be written and understood? His lines are on personal experience and on the grasping of life situations in addition to a heightened awareness of an individual's socio-historical dimension and its transfer from one generation to another: in short, the stuff from which history is made. In other words, Polybios displays *a new self-understanding* in the meaning-making of social change in one's life. The character that disturbs it should by definition not be a Deity! And yet?

“Fortune is quite capable of wiping out reasonable expectations with unforeseeable turns of events and if she gives aid to anyone and tips her balance in his favor, she will eventually, as if she regretted the help, tip the scale against him and instantly ruin his successes.” Why does Polybios coin these words about her?<sup>6</sup> *Anxiety must have been the hallmark of the Hellenic society who created such a Goddess!* Histories of the Macedonian king Perseus provided an example of how a superbly high-rising position ends up in humiliation. Not only individuals, but also entire countries show that pattern: they flourish in one century and are annihilated in the next—Romans provide an example when their empire became destroyed in the end. No wonder that Matheson describes Tyche (long before she became a deity, after

---

<sup>6</sup>Pollitt, *An Obsession...*, see (4), page 13.

many centuries in which poets and philosophers contemplated her in verses and tractates) as a determinate feature of life encapsulated in a word that stood for chance or fortune. She dates Tyche's divinity to the fourth century B.C. but traces her existence back into earlier centuries where she can be found as a linguistic expression, a water nymph, a cult object —until she calls herself in the fourth century “a divinity (theos) and the director and manager of all things.”<sup>7</sup>

The case of Tyche is not a simple process of name giving; it is a process of *meaning-making* that finds its peak in deification. Where man understands that he is no longer able to keep fate or fortune in his hand, fate and fortune are relocated to other semantic dimensions. For example, Archilocus (680-645) is said to be the first Greek poet who wrote his lyrics using the first-person singular. This style was an integral part of his profiling Greek character, in particular its identity formation. Werner Jaeger refers to the poet because he “encourages his friends to endure misfortune patiently or tells them to leave everything to the gods. *Tyché, Fortune, and Moira, Fate, give man all he has*. The gods often lift up men who lie on the ground in disaster, and often cast down to the earth men who stand firm”. All of these concepts about the power of Tyche occur also in later Greek thought. Jaeger thus suggests that “Archilocus’ religious thought is rooted in the problem of Tyche, and his knowledge of God is knowledge of Tyche.” [...] The Greeks, as they learnt to understand the problem of human freedom, penetrated deeper into the mystery of Tyche.”<sup>8</sup> This is an important aspect of understanding Tyche with regard to fate and freedom: the aspect of *endurance*. Freedom is not solely the result of individual decisions in life or of social commitments; passivity is equally important in acquiring freedom. Although ‘endurance’ and ‘actively profiling a first-person identity’ seem in contrast, both are of essence for social behavior.

There is another aspect to mention: how can endurance be possible when the complexities of daily life (communication and understanding included) do not allow withdrawal from a powerful personal identity? Tyche bridges the distance between *endurance* and *profile of a self* by means of *signs* that carry her image and are meant to be *in the hand of everyone*. This is why she played a role in even the most remote Hellenistic cities. Pollitt provides archeological and historical data about important public sculptures of Tyche (especially the Tyche of Antioch by Eutychides) and many subsequent images of the Goddess that fit in with a semiotic explanation: her character was devastating, her image omnipresent. “The personification of cities and countries as females wearing ‘city wall’ crowns was a type already established for use on coinage in the fourth century B.C.” Tyche spreads her image in the days of her deification. “It is important to emphasize that while these Tyche figures had an allegorical content that was typical of their age, and that while they probably served the same function that flags and state seals do in our own time, *they were not simply symbols*. [...] the fortune of a city was understood as something very real, even if unknown. [...] figures of Tyche may have taken on a kind of magical quality, like

<sup>7</sup>Susan B. Matheson: *The Goddess Tyche in: An Obsession...*, see (4), page 19 ff.

<sup>8</sup>Werner Jaeger: *Paideia: the Ideals of Greek Culture*. Vol. I, Oxford UP New York 1945, p. 124. (*Italics are mine, JMB*)

good luck charms”. Pollitt adds that miniature figures of Tyche were “probably both amuletic and apotropaic, images both of hope and anxiety”.<sup>9</sup> Long before her ultimate deification in the fourth century B.C., Tyche shows that a man’s individual fate and fortune are embedded in town and country, and therefore socially engendered beyond his personal power. The presence of her face on the coins of the polis was a sign that man’s fate and fortune remain metaphorically and materially in his own hands—despite the quirks of the Goddess.

#### CITY FORTUNE

Tyche is not the Goddess of exclusively individual disaster and personal fate. She wears the mural crown to show her guardianship to the cities in the Greek and Roman world and to rein over the fortune of those cities that were for her almost personified organisms. These ties between individual and social structure confirm an individual’s engenderment in social life—a basic theme of even our contemporary understanding of signs and meanings in life. Without bonds to city life, a Greek personality could not unfold. Hence the intensity of Tyche’s presence in times of balanced prosperity as well as in times of discontinuity or fatal blows in the political lives of persons and cities. Tyche was the axis of meaning-making in all circumstances. Had she not proclaimed to be “the director and manager of all things”?

Pieter Broucke describes in the Yale exhibition catalogue how statues representing Tyche were erected all over the Hellenistic regions; this production was at its peak when in the fourth century B.C. Praxiteles sculpted the Tyche of Megara and set the statue up near the temple of Aphrodite<sup>10</sup>. But they were, of course, a dwindling minority of signs in comparison with the coins that helped circulate the image of Tyche in the hands of numerous citizens during several Hellenistic centuries; they even survived the spread of Christianity in later ages. Greek coinage thus created a fixed and supportive frame of reference for the behavior of citizens.

Clearer feelings of chaos come to the fore when the political landscape changes. A result is cultural diversity, anonymity and cosmopolitanism. As Broucke states: “Stability and order [...] were replaced by feelings of chaos and insignificance, as well as by the acknowledgement of the constant possibility of a reversal of both personal and communal forces. Within this new Hellenistic world order Fate came to occupy a crucial position. The personification of the source of that uncertainty, Tyche—fate, destiny, or fortune—became an essential and ubiquitous element in Greek culture.” Even in our days, we feel the constancy of possible reversals and agree with what no longer appears as solely an observation of Ancient Art or Classical Archeology, namely that: “the surge in attention given to a city’s Tyche was, thus, characteristic of the uncertain times.”<sup>11</sup> This feeling determines modern legal and

<sup>9</sup>Pollitt, *An Obsession...*, see (4), page 14,15. (*Italics are mine, JMB*)

<sup>10</sup>Pieter B.F.J.Broucke: *Tyche and the Fortune of Cities in the Greek and Roman World*, in: *An Obsession...*, see (4), page 35-49.

<sup>11</sup>Idem: in (4), p. 37

political thought and the role of change therein. Coins and their Tyche figures are still a sign that citizens struggle to hold on to their identity by taking fate and/or fortune in their own hands.

#### TYCHE PERSONAL AND PUBLIC

All Tychai fused personal and public fates and fortunes. Capricious Goddesses determined the flux of life. The numerous coins, which exchanged continuously in the hands of individuals in the Ancient and the Hellenistic world showed the *face* as an indication for the private, and the *mural crown* for the public dimensions of life. That portrait has an important meaning with regard to the general image of man and of Tyche as a deity. One will never encounter a single Tyche solely made for individual issues and another made for exclusively public issues. Lives of individuals and lives of the cities are one life structure, which at a certain moment in history also provides the basis for ideas related to democracy. Inscriptions have been found where Tyche is linked with Eirene and with Demokratia; the three were together (not one of them alone, or one after the other) deified in the fourth century B.C.<sup>12</sup> To enjoy good fortune, one has to be part of a public—there is not a ‘someone’ who can enjoy any fortune without public/city ties. Engendering an identity seems to be at stake: enjoyment of fortune or fate needs a social structure; individual fate and fortune are in essence public and only as public features can they be individual. If the *public* Tyche acquired a personal aspect, then the *personal* Tyche was always public—each city had its own Tyche, and cities bore their names together with their Tyche to show the world their specific features. The Tyche of a city could very well be conflated with the Tyche of the Demos, so that all features of Tyche, good and bad, unify individuals in their immediate social structure. Tyche’s blending with other deities created a force of reconciliation and even integration of diverse societies within a state. A Tyche as *Oikoumene* is therefore possible throughout—a ruler’s city-Tyche can dream of becoming the ruler of the entire inhabited world, as the Ptolemies once did.<sup>13</sup>

Individual fortune is thus anchored in common prosperity. That thought fits into more than one consideration of Jaeger, who in the context of Archilochus’ philosophy and lyrics suggests: “It is a universal conception that there is a ‘rhythm’ in all human life.” Tyche’s divine role is grounded in that fact. Archilochus thus recommends for one to exercise self-control and “to avoid excessive joy or grief, to feel excessive emotions for the happiness or unhappiness that comes from destiny.” Addressing Tyche must awaken that spirit; the rise and fall of human fortune belongs to the ‘rhythm’ of human life itself. ‘Rhythm’ should not be interpreted in terms of ‘flux’ or movements of music and dance, but as a succession of ‘tableaux’ or ‘forms.’ Jaeger underlines: “rhythm then is that which imposes bonds on movement and confines the flux of things”—a concept which Aristotle named *schema*.

<sup>12</sup>Matheson, in (4), p. 19

<sup>13</sup>Amy C. Smith: *Queens and Empresses as Goddesses*, in: (4), p.91

Consider how prosperity and fate, fortune and uncertainty, are deified because they do not have the measure of a human hand. Coins that represent them can be no more than a modest sign of our possession of fate and fortune, and the concept of possession itself may not embrace all dimensions at hand. The same is true for our speech that tries to fathom fortune or measure fate by means of words. Speech is a form of *sympatheia*, which is precious, albeit often completely inappropriate to all of us. Speech is passion and emotion when the doom sent by the gods is envisaged. We speak here about a first form of tragedy. Jaeger remarks: “Without the problem of Tyche or Moira (which had been brought home to the Greeks by the Ionian lyric poets) true tragedy would never have developed; [...] the plot remained first and foremost a description of human suffering, a fuller and nobler expression of the high idea of God’s power over man’s life.”<sup>14</sup> Tyche reigns in function of a high power in life; she shares that function with Law. Everyone who considered the relations between Tyche and Law noticed this double face. Both have their own ideas about ground lines of order in human life, which often differ from daily hopes and experiences. Tyche had nothing but coins as a sign of its inarticulate consciousness of these dimensions. She knew on the other hand, what Law (here we do not refer to Diké who was often thought to be related to Tyche) could not know: that *a moment of chance determines the course of life beyond the grip of law and legal discourse* on that life. Law does not consider *determination through chance* because it does not recognize any such power. An essential difference between Tyche’s discourse and Law’s discourse is the *openness* of the first and the *closedness* of the second. Awareness of Tyche in modernity focuses on such tensions.

## PEIRCE’S GODDESS

Try to verify any law of nature and you will find that  
the more precise your observations the more certain they will be to  
show irregular departures from the law.  
Ch. S. Peirce 1893

*If Tyche is still a Goddess in our contemporary philosophy, then she is Deity of THE OTHERNESS OF ALL THINGS.* This otherness permeates all forms of discourse, and concerns an opposite, a negation, a ground, a contrast, a shadow, an unexpected, a clown, a trickster, an absence, the true and the false and many more. Charles Sanders Peirce, who is called the most original of American philosophers and their greatest logician, incorporated Tyche when he laid the groundwork for his principle of *continuity* (logical as well as ontological), which includes Tyche’s (re)-presentation of Otherness. In her shadow, he unfolded many features that are relevant for the foundations of a philosophy of law and legal discourse<sup>15</sup>.

<sup>14</sup>Jaeger, see (7), p. 250,251. See also: Olga Taxidou: *Tragedy, Modernity and Mourning*, Edinburg UP 2004

<sup>15</sup>Charles Sanders Peirce: *A New List of Categories* in: Proceedings of the American Academy of Arts and Sciences, Vol. VII, 287-298; Joseph Brent: *Charles Sanders Peirce. A Life*. Indiana UP, 1993, p. 69.



*First*, as Peirce's biographer Joseph Brent highlights, there is an essay as early as 1867, which Peirce considers as being a part of "the substance of my central achievement." That substance, as said before, is *not* his *pragmatism*<sup>16</sup> but rather his *tychism* and its antipole, *agapism* or 'evolutionary love'. He called the related principle of continuity *synechism*. *Tychism* and *agapism* were complementary phases of the *synechistic* law of mind, which for him was the same as the law of nature. Their relation to pragmatism is a key for understanding Peirce's philosophy, even more so since *pragmatism* was designed long after these more fundamental conceptions of *tychism*, *agapism* and *synechism*.

*Second*, the temporary and sudden publicity given to *pragmatism* overlaid Peirce's deep and lasting concern about the unity of ideas—a problem that Tyche exhibits in each of her disturbingly various contradictions. To unravel *the connectedness of things* appeared for Peirce to be the truly philosophical task to complete. He thus considered more than any other Occidental philosopher in the 19<sup>th</sup> and 20<sup>th</sup> century how in the Ancient Greek world Tyche became worshipped; for if one cannot take fate and fortune in hand, one should at least exchange coins bearing her image from hand to hand. Those coins are *signs* involved in the creation of *meaning*—an essential element of Peirce's project, which recalls our outcry: "Give us a sign...!".

*Thirdly*, 'synechism' deals with the interconnectedness of things. Our language/discourse articulates interconnections via the activities of our mind, accompanied with and most often created by *signs*. Peirce claims that signs are neither a reproduction of reality nor a copy of what they signify, instead they are *constructions*, like maps, icons, or plans of action, and therefore do not limit their function to linguistic articulation. His philosophy insists on the emergence of *novelty* as a principle upon which our conceptualizations are based, conceptualizations, which erroneously tend to bring reality to the fore as if 'words for things' exist. Under the heading of the concept 'continuum', Peirce contemplates the requirement that we bring novelty in harmony with already existing identities.<sup>17</sup> He thus unfolds his doctrine of Pure Chance as a factor in the context of *Becoming*, and thus—as Kevelson notices—establishes semiotics as a process of growth of thought.<sup>18</sup> A sign is the fulfillment of Tyche's capacity to master inconsistency by connecting it with consistency; signs can thus be an opposite, a breach, a trickster, a falsification, a fool, an incomprehensible, an unforeseen, or an injunction in the surface of our text, speech or action. That conceptual appearance of *a sign including its very opposite* brings the sign as just a phenomenon under the innumerable phenomena with which we are confronted. A sign makes us only understand its conceptual representation, and *not* the thing it represents, the knowledge of which we can perhaps only approximate. Do not forget that Tyche emphasizes how the real is precisely *not* what is immediately before us, nor what seems predestined and ordered through laws. The

<sup>16</sup> For which Peirce is still known as a companion of William James, and which constitutes an elaborately discussed theme in legal philosophy.

<sup>17</sup> Kelly A. Parker: *The Continuity of Peirce's Thought*, Vanderbilt UP 1998.Ch. 4 & 8.

<sup>18</sup> Ch. S. Peirce: See (1), Vol VI, 47 ff.

real is what emerges in new relational patterns. As a result, one of Tyche's vibrantly modern features is a *pattern philosophy*!<sup>19</sup>

*Fourthly*, what we think we know as real is reality represented by means of linguistic articulation. Reality is thus at every given time incomplete and inaccurate, even when interpreted with a logic capable of prediction. Kevelson comments: "only an inductive mode of inference can advance our knowledge of the world as it is becoming".<sup>20</sup> When conceptualizing a sign we enter an *unlimited* process of semiosis, as not only Peirce but later also Eco and Colapietro conclude.<sup>21</sup> This characterization of semiosis has a far-reaching conclusion for the presence of reality as a concept in our discourses and the role of chance therein. Since there *are* no signs, Peirce suggests, and nothing *is* a sign, everything *can become* a sign such that there are ultimately solely sign functions, and those are only temporarily exercising such a function. *Does only Tyche show us reality; and are reality and chance a double-faced articulation?*

"The real, then, is that which, sooner or later, information and reasoning would finally result in, and which is therefore independent of the vagaries of me and you," Peirce writes. Conceiving the very origin of reality essentially involves the notion of a community, without limits and capable of a never-ending increase of knowledge. Hence Peirce's conclusion: "There is nothing, then, to prevent our knowing outward things as they really are, and it is most likely that we do thus know them in numberless cases, although we can never be absolutely certain of doing so in any special case."<sup>22</sup>

We cannot remain steadfast with any doctrine of necessity or of determinacy because of the complex games Tyche plays with us. The combination of steadiness and chance is her major theme. Any moment she may interfere, spurring change, growth, twist and turn, or unforeseen development. Peirce underlines: "Everywhere the main fact is growth and increasing complexity. [...] By thus admitting pure spontaneity of life as a character of the universe [...] I account for all the variety and diversity of the universe, in the only sense in which the really *sui generis* and new can be said to be accounted for. The ordinary view has to admit [...] that variety can spring only from spontaneity, or else shoves it back to the beginning of time and supposes it dead ever since."<sup>23</sup> And he completes on the very same page: "Yet chance is explanatory of change, which is a fact".

*Fifthly*, this insight leads Peirce to his *evolutionary semiosis*; only that view seems apt to appropriately consider the infinite character of semiosis. It appears in the understanding of the sign under the guidance of Tyche and in the insight that signs are

---

<sup>19</sup> William Gibson: *Pattern Recognition*. Berkley/Penguin 2005; Daniel C.Dennett: 'Real Patterns', in: *The Journal of Philosophy*, Vol.88, 1. p.21f.

<sup>20</sup> Roberta Kevelson: *Peirce, Paradox, Praxis*. Mouton de Gruyter 1990, p.310.

<sup>21</sup> Umberto Eco: *A Theory of Semiotics*. Bloomington. Indiana UP. 1979, p. 69, 120 ff. See also: Vincent M. Colapietro, *Peirce's Approach to the Self. A Semiotic Perspective on Human Subjectivity*. New York, 1989, p. 35f.

<sup>22</sup> Ch. S. Peirce: See (1), Vol V, 315 f.

<sup>23</sup> Ch. S. Peirce: See (1), Vol. VI, 58 f.

only possible in an open-ended, non-finite, complex and evolving process with chance as one of its major components: “I start by defining what I mean with a sign. It is something determined by something else its object and itself influencing some person in such a way that that person becomes thereby mediately influenced or determined in some respect by that Object.” Peirce could do so only after having described in 1901 how anything which determines something else must refer to an object to which itself refers to something else in the same way, that the ‘something else’ must become in turn a sign, and so on. Emphasis is on the last three words: the ‘and so on’. This statement suggests that it is questionable whether consciousness can ever be seen as essential to the understanding of a sign. There is always a determination of a sign of the same object at work of which it is itself a sign! There is virtually an endless series of signs when a sign is understood, and a sign never understood cannot be said to be a sign. As a consequence, not consciousness but the virtually endless series of signs in which consciousness is involved, is essential for understanding a sign. Signs are the outcome of evolutionary processes and are understood in terms of chance. If we do not accept chance, we cannot understand signs! Thus, there exists for Peirce a remarkable tension between chance and design, between novelty and habitual patterning. What is essential in the concept of a sign is also of essence in the entire project of *semiosis*. What about law and legal discourse?

#### TYCHE IN LAW

Does Tyche fit in *legal* discourse? She might be shy to give an opinion because her role in legal discourse would perhaps be different from the role she plays in general culture or history, even though Diké was her companion deity and both guarded a city’s good fortune. Her other equivalent was Demeter, the Goddess of grief and good harvest, nurturer of mankind who could empathize with grief, having experienced it herself. Those two also relate Tyche to law, so that we can see that she fits in legal discourse under the condition that we understand law as *a system of signs* and that we take distance from law as a *closed discourse* imprisoned in its self-referential character.

Neither the Goddess nor Peirce focused on law and its practices. Their fascination was with nature, history and mankind in general. But Peirce shows clearly that our understanding of the law depends on the relation between propositions of universal and/or of particular character. This is a *semiotic* issue, which has its foundations in Peircean insights. *Legal* laws are *particular* (even when they seem to be general within their own discourse) and make Tyche’s character and Peirce’s plea for ‘coherence *together with* chance’ important. Kvelson calls that plea a “‘hotbed’ of possibility” of greatest importance for modern law.<sup>24</sup> She thus characterizes “the attempt to transform the idea of law from a universal proposition which is indefinite

<sup>24</sup> Roberta Kvelson: *The Law as a System of Signs*, N.York 1988; —id.: *Peirce and the Mark of the Gryphon*, N. York 1999; —id.: *Peirce, Paradox, Praxis*, N.York/Berlin 1990. —id.: *Inlaws/Outlaws*, Peter de Lang, Lisse 1977; —id.: *Peirce, Science, Signs*, N.York/Bern 1996.

and vague to a particular proposition which is definite and resolved of vagueness” as a stumbling block<sup>25</sup> that Austin and others met when discussing legal positivism and determinism. The voice of Tyche changes our view on the relationship between universality and particularity from *deterministic* to *chance-related*, as Peirce has shown in most of his works.<sup>26</sup>

Peirce’s thoughts concern a hitherto unwritten study on legal philosophy. Fisch underlined their relevance for the foundations of law and legal discourse: “I argue that Peirce had a much greater and lifelong interest in law and in social philosophy than has hitherto been recognized.” He placed Peirce’s concern with law and legal thinking in a biographical perspective. “Philosophers of law,” Fisch writes, “have often remarked that there were several distinguished lawyers in the Metaphysical Club in which pragmatism was born, and have traced connections between pragmatism and ‘legal realism’; but more recently Roberta Kevelson and others have found relevance to legal reasoning in a much wider range of Peirce’s work on logic.”<sup>27</sup> *Legal semiotics*, as prepared in Peircean logic, metaphysics and pragmatism, takes the spirit and the form of such a philosophical endeavor. Peircean thoughts and Tyche’s inspiration profile a legal philosophy in at least the fields of meaning and argument, chance, and the open character of discourse.

We are not used to living with the idea that every discourse must be perceived as a place where meanings are made, ideas grow and novelty occurs. Tyche reins over every possible discourse—*legal* discourse not the least. Do the three C’s that dominate Civil Law—completeness, coherence and consistency—not leave room for the Goddess?<sup>28</sup> Certainly, but those doctrinal features are in essence *rhetorical*. They fortify the narrative that keeps *law as an institution* alive. Tyche has taught us to appreciate habit formation. She does this very effectively with regard to legal argumentation.<sup>29</sup> The semiotics of argument in law and legal practice demonstrate how contentions are offered as if they were facts, but once we are clear about how inconsistency creates consistency, incoherence causes coherence, and incompleteness functions as an element of completeness, as Greimas would suggest,<sup>30</sup> we understand how arguments are *made* (and not simply represented) within the boundaries of the discourse. When Peirce participated in Harvard’s Metaphysical Club in 1872, Sir Frederick Pollock had just written some lines which were clearly ahead of their time, stating: “Law in the widest sense is a condition or assemblage of conditions under which the evolution of things proceeds...”<sup>31</sup> James Boyd White offers a recent

<sup>25</sup> Kevelson, *Peirce, Paradox, Praxis*, see (18), p. 173.

<sup>26</sup> Ch. S. Peirce, See (1): Vol. V, Ch. 5, and Vol. VI, 32, 51f., 63f., 200f., 204, 270, 336.

<sup>27</sup> Fisch, See (32), p. 13, 438. The *Metaphysical Club* is a philosophical club with the future Justice O.W.Holmes Jr, the psychologist William James and with Charles Sanders Peirce, established in January 1872 in Cambridge, Mass and dissolved in December 1872. When Peirce arrived at Johns Hopkins University in 1879, he founded a new Club there, which existed six more years.

<sup>28</sup> John H. Merryman: *The Civil Law Tradition*, Stanford UP 1985 (2<sup>nd</sup> Ed.) Ch. 2; Ch. 5.

<sup>29</sup> I. A Richards: *The Philosophy of Rhetoric*, Oxford UP 1936, Ch. 2.

<sup>30</sup> Algirdas J. Greimas & François Rastier: *The Interaction of Semiotic Constraints*, Yale French Studies, Vol. 41, 1968.

<sup>31</sup> F. Pollock: Law and Command, in: *Law Magazine and Review*, 1872, 1. p. 189 f.

example when he reflects upon how a text named “The Constitution” inspired modern US society to create *a culture of argument*. He concludes how “this is thus in a literal sense a rhetorical constitution: it constitutes a rhetorical community, working by rhetorical processes that it has established but can no longer control. *It establishes a new conversation on a permanent basis.*”<sup>32</sup>

*Arguments* establish law and legal discourse during the process of meaning-making that unfolds whilst determining a truth in an incidental case.<sup>33</sup> But Tyche desires that this meaning-making be a process beyond discursive coercion. That becomes clear *when she shows her whimsical character*, as will become apparent in a Greek and in a modern example. Werner Jaeger tells us an example that circulated in the Ancient Greek world: “In Xenophon’s portrait of Cyrus, [...] Cyrus is a Persian Alexander. Only his fortune, his *tyché*, was different from his Macedonian parallel. The spear, which pierced him, might have killed Alexander. If it had not taken Cyrus’ life, the Hellenistic age would have begun with him, and would have followed a different course. [...] Greek culture, through its intellectual content and its form, always imparts to every other élite something which that élite does not possess, but thereby helps it to develop itself too.”<sup>34</sup> Greimas would have constructed one of his squares, showing the play of opposites of meaning and their creative integration. More than two millennia later, Paul Auster introduces Miles, the central figure of his 2010 novel, who is a victim of chance, waiting for his Tyche without knowing that he already met her: “Whenever he thinks about that day now, he imagines how differently things would have turned out if he had been walking on Bobby’s right instead of his left. The shove would have pushed him off the road rather than into the middle of it, and that would have been the end of the story, since there wouldn’t have been a story...”<sup>35</sup>. However, there is *always* a story, as we know from the lessons Tyche taught us.

“One should beware of believing that the inventive mind operates according to chance.” This sentence of the French Enlightenment philosopher Destutt de Tracy provides Greimas with a motto for his groundbreaking 1968 essay. Do not forget that Tyche was named ‘The constellation Virgo’; she determines how an *order of things* emerges, and encounters us with vision, feeling and spontaneity where human creativity unfolds. She was for that reason a guide for Peirce in the context of understanding his own personal fate as well as the development of his ideas about an evolutionary cosmology, which colored his lifelong interest in philosophy and logic.

---

<sup>32</sup> James Boyd White: *When Words Lose Their Meaning*, Chicago UP 1984, p. 246 f. (*italics* JMB). See also Ch. Perelman: *The idea of Justice and the Problem of Argument*, London/New York 1963, and Perelman/Olbrechts-Tyteca, *The New Rhetoric: A Treatise on Argumentation*, Notre Dame UP 1969. Notice the proximity to I. Prigogine & I. Stenger: *Order Out Of Chaos*, Glasgow 1984.

<sup>33</sup> Jan M. Broekman & William A. Pencak: *Lawyers Making Meaning. The Roberta Kevelson Seminar on Law and Semiotics at Penn State University’s Dickinson School of Law*, IJSL Vol. 22, Nr. 1, 2009. See there D.J.Brion: *Trial Argumentation: The Creation of Meaning*, p. 23 ff. See also: Paul Van Fleet: Tarski, Peirce and Truth-Correspondences in Law, in: *The Semiotics of Law in Legal Education*, Jan M. Broekman & Francis J. Mootz III [Eds], Springer 2011, Chapter 3.

<sup>34</sup> Werner Jaeger, see (7), Vol. III, p. 161.

<sup>35</sup> Paul Auster: *Sunset Park*, Henry Holt & Co. 2010.

In *Evolutionary Love*, written in 1893 he suggests that all forms of evolution are tied to Tyche's force, which reigns over a person in his or her social context.<sup>36</sup> Thus, Tyche influences and often even determines the development of a human character, *because any self is for itself a sign*. "Every thought, or cognitive representation, is of the nature of a sign. 'Representation' and 'sign' are synonyms. The whole purpose of a sign is that it shall be interpreted in another sign; and its whole purport lies in the special character, which it imparts to that interpretation. When a sign determines an interpretation of itself in another sign, it produces an effect external to itself [...] not in this or that metaphysical sense, but in an indisputable (*read: argumentative, rhetorical*) sense. [...] Thinking is a kind of action, and reasoning is a kind of deliberate action; and to call an argument illogical, or a proposition false, is a special kind of moral judgment, and as such is inapplicable to what we cannot help. This does not deny that what cannot be conceived today may be conceivable tomorrow. But just as long as we cannot help adopting a mode of thought, so long it must be thoroughly accepted as true. Any doubt of it is idle make-believe and irredeemable paper."<sup>37</sup> This self-understanding is based on insight into *order* as such, an order that *expands* itself in the forms of argument and accelerating reasonableness.

The *openness* of a discourse, Tyche teaches legal philosophers, *is not a condition for chance, but is itself the result of chance*. Kevelson has spent much energy in discussing the *open* character of law's discourse in her semiotic interpretation of law. She indicates that any legal argument is in need of a narrative space located between chance and necessity, and Tyche is the most important performer within this space. Peirce would have agreed and repeated how every thought-life of a person is a sign. We know from Fisch that Peirce found in a book on Plato how Socrates defined thought as 'a conversation of the soul with itself' and wrote in the margin: "This is, I think, Plato's greatest contribution to thought."<sup>38</sup> He would underline that all thought is by nature dialogic, and thus characterizes all signs, signification and meaning-making. *A thought is like a word is like a sign*: they cannot exist in the isolation of their own autonomous self. Tyche guarantees the Otherness that thoughts, words and signs need to become, for only chance furthers novelty and continuity. It is interesting how Peirce's thoughts fit almost seamlessly to the subject "*Tyche in Law*." Inspired by his philosophy, we conclude with a few keywords to describe her position in legal discourse more precisely.

*First*, Tyche enables the *openness of discourse*. Kevelson characterizes the field within which the issue is most thoroughly debated, the field of '*autopoietics*,' as "a rather old hybrid of semiotics, bent in an unusual way."<sup>39</sup> Its self-reflective character parallels Peirce's dynamics of inquiry—a process that plays a dominant role in his science and thought. Tyche would not accept this singular focus on discourse as 'a self that plays the game of reflection on itself.' If such reflectiveness in law occurs, it does not create closeness by means of doubling itself, but it creates on the contrary

<sup>36</sup> Ch. S Peirce: *The Essential Peirce*, Vol.1. N.Houser & Chr. Kloesel (Eds), Indiana UP 1992, p. 362.

<sup>37</sup> Ch. S. Peirce, in (1), Vol. VIII, 191. (*My italics + additions. JMB*).

<sup>38</sup> Max H. Fisch: *Peirce, Semeiotic, and Pragmatism*, Indiana UP, 1986, p. 442.

<sup>39</sup> Roberta Kevelson, at (20): *Peirce and the Mark of the Gryphon*, p. 160.

new habits of thought so that reflectiveness can include novelty, obeying the prescriptions of Tyche. She cares that openness shows itself even in reflection, so that chance, spontaneity, irregularity and lawlessness remain constituent elements of law's discourse. A legal philosophy should not consider lawlessness as a deviation or exception but as a regular force of law.

*Second*, philosophical discussions about (in)determinism are still relevant. Peirce's happy relationship with Tyche shows an intensity that necessitates a contemplation of the issue in *legal* context. For example, Kvelson suggests that what happened in the aftermath of the US Civil War, brought an implicit theory of law to the fore that evolved from *argument*, and in particular from arguments which produced dissent, discontent and conflict. A modern parallel could be discovered in recent developments of European Union Law, where dissent and discontent bring novelty and hitherto unknown legal insights and procedures, for instance via EU *directives*. Tyche asks Europeans to digest her whimsical character features when approaching law.<sup>40</sup> Kvelson's semiotic insight can become real on both continents: *a People divided can nevertheless be One!* And, not unlike a sign, the One can bring division again, which results in a new One, etc. ad infinitum. This infinity is, again, at home in Peirce's thoughts when he highlights how *Secondness* (the medium between *Firstness* and *Thirdness*) is characterized by creative conflict, which means that law produces sequences of impressively different layers of reality, and does not solely reflect upon them.

*Finally*, one concludes that *Tyche highlights the dialogic dimensions* of legal relations in society. She was after all a Greek Goddess, and knew by experience how Socrates (in the *Theaetetus* and the *Sophist*) mentioned that *all thought is dialogic by nature*. She adds to this context the pivotal importance of the Sign (Peirce noted this as if he was her secretary), concluding that the Self is always a sign for the Self. A first sign in legal practice is with necessity a Self! The semiotic understanding of the Self is the riddle Tyche has left for 21<sup>st</sup> century lawyers. Solving this riddle seems to be a task of exceptional gravity when chance, dissent and conflict become novel components of law in times of revolution, and the apparent decline of the Nation State.

Tyche brings us back to Peirce in a much deeper and more bewildering sense than we ever thought of. Chance and change are notions awakened by Tyche's whimsical character. Therefore, these can never become stable and fixated elements of a theory! In Peirce's references to Tyche, in particular in the development of his *tychism*, he acquired by no means a final form of his 'evolutionary cosmology'. Again: to have Tyche function in the context of a stable philosophical project seems incompatible with her eccentric nature. Peirce experienced that from the very beginning, and in particular in the long period of his life in Arisbe, where he studied Greek philosophy with great intensity.

---

<sup>40</sup> Which could very well be examples of Law's Chaotic Order, suggests Denis J. Brion in: *Chaos-What Judges and Juries Do*, in W.Pencak & J.R.Lindgren: *New Approaches to Semiotics and the Human Sciences*, Peter Lang 1998, p. 33.

All our considerations focused on the question: what can Tyche's position be in a theory or a philosophical project, and is she—given her very nature—able to function in such a framework by any means? Can Peirce's reflections on Kant, on Kantian categories, on Categories as such and on the Triadic nature of ontology and on concepts such as chance or continuity, be considered as building blocks of a system that includes Tyche? The question is the more pressing where she is mirrored in the above-mentioned socio-legal situation of today's society and its political culture. In times of a decline of the nation state, of governance not by governments but by global corporations defending their interests even under the heading of 'human rights' concepts, Tyche's eccentricity catches the eye.

We should not qualify Tyche's spirit negatively. She inspires us to understand the restlessness of life, but gives us not enough power to understand life in terms of restlessness. Hence Peirce's focus on chance, without which no change or surprise can enter the stage of our knowledge and understanding of world history. Is Tyche's deification a way of overcoming the dyadic character that reins all our knowledge, in particular our entire philosophical understanding of reality? Does her deification contribute to this fundamental change in our approach, described by Peirce in his letters to W. James in which he suggests that he may have found the key to the secret of the universe? "The guess of the secret of the Sphinx", he calls it. Synechism originates here, eventually called tritism: each opposition needs mediation, a "tripling". The process of deification could therefore be characterized as a forwarding of that tritism, a truly transcultural, cosmic principle. Hence Peirce: "...scepticism about the reality of things—provided it be genuine and sincere, and not a sham—is a healthful and growing stage of mental development". Not, that evolutionary cosmology is made possible by discovering the structure of the triadic, not inverse: the triadic notion is *not* coming before, not preceding, the cosmology. That cosmology is fruit of insight into the triadic structure of understanding everything. In law, we mention the modern striving for an interpretation of doctrines and principles in terms of human interpellation and affection. Indeed: the False, the True: Peirce is not interested in features of the *concept* of chance, or in prophecies about its eventual effects, but in the functions of chance in a philosophy focusing on interrelations of things, events, meanings and discourses. It implies Peirce's interest in change as a product of chance, in the foundations and the logics of chance, in growth, and evolution.

We highlight, that the influence of Tyche on Peirce's philosophy is more important than was hitherto noticed, in particular in as far as Tychism is in itself dynamically leading to tritism. Peirce's philosophy is not determined by pragmatism or even pragmaticism but by Tychism, and precisely this feature makes his philosophy fruitful for exploring its affinity with legal thinking – in competition with logics, whilst he fully understands that legal logic is not formal logic.