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## IDEOLOGY AND LEGAL INTERPRETATION: SOME THEORETICAL CONSIDERATIONS\*

### Summary

The aim of the current paper is to analyse the actual role of ideology in legal interpretation from the perspectives of legal theory, philosophy of law and theoretical sociology of law. Due to the unavoidable indeterminacy of legal language and the impossibility to predict all potential future situations at the stage of creating legal norms by the legislator, legal interpretation always involves a certain degree of discretionality on the side of the interpreter who fills in the gaps left by the legal materials by solutions consistent with that ideology.

**Keywords:** law, ideology, legal interpretation, the political.

### Introduction

The aim of this paper is to explore the impact of ideology upon legal interpretation, especially in the course of adjudication. The main argument presented in the paper is that due to the unavoidable indeterminacy of legal language and the impossibility to predict all potential future situations at the stage when legal norms are created by the legislator, legal interpretation always involves a certain degree of discretionality on the side of the interpreter (legal scholar, attorney or judge). As a result, interpreters are forced to fill in the content of legal norms (which are always more or less semantically “open”) by referring to what they consider (often without reflexion) to be ‘right’, ‘equitable’ and ‘just’. However, due to the fact that, as all members of society, they are imbued in the hegemonic ideology, it is that ideology which actually performs the task of gap-filling in legal norms. Hence, the role of ideology is crucial in the process of legal interpretation. Furthermore, the paper will claim that the role of ideology in legal interpretation is political, in the sense that it determines the outcome of fundamental antagonisms within society, in particular those of an economic character.

In terms of scientific methodology, it needs to be underlined that the paper has an analytical character, i.e., it will analyse the concepts of ‘ideology’, ‘law’ and ‘legal interpretation’, in the light of the concept of ‘the political’ (das Politische) in order to answer the research question, rather than approaching it empirically (e.g., by interviewing judges, lawyers or citizens).

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\* The article presents the personal views of the author and should not be attributed to any organisation or institution.

## 1. Ideology, the political and legal interpretation

The notion of ideology will be understood, following Slavoj Žižek,<sup>1</sup> as “a fantasy-construction, which serves as a support for our “reality” itself: an “illusion”, which structures our effective, real social relations and thereby masks some insupportable, real, impossible kernel (conceptualized by Ernesto Laclau and Chantal Mouffe as “antagonism”: a traumatic social division which cannot be symbolized). The function of ideology is not to offer us a point of escape from our reality but to offer us the social reality itself as an escape from some traumatic, real kernel.”<sup>2</sup> Ideology plays an important role in the political dimension: its serves to protect the *status quo*, it “masks reality, misrepresents reality, creating a fantasy world to allow the continuation of a system.”<sup>3</sup> Indeed, “[t]he fundamental aim of ideological fantasy is to silence social antagonism.”<sup>4</sup> From an epistemological point of view, the ideological fantasy is a ‘frame’ which we superimpose on raw facts of social reality in order to understand it and interpret it.<sup>5</sup>

‘The political’, as opposed to ‘politics’ as a field of social activity, is the intensity of a conflict, characterised by the friend/enemy distinction. The political is therefore a formal notion, identified by the intensity of binary code (friend/enemy).<sup>6</sup> Its underlying substance, in contrast, can be of variegated nature.<sup>7</sup> Schmitt points to the economic, social, ethnic or religious fields which, if the conflict reaches an appropriate level of intensity, can give rise to a political distinction.<sup>8</sup> In other words, the political denotes a structural conflict tearing society. In contemporary political philosophy, the notion of the political is being theorised upon by Chantal Mouffe, who proposes to replace Schmitt’s antagonistic model (friend vs. enemy) with an ‘agonistic’ model (adversary vs. adversary).<sup>9</sup> Connecting Schmitt’s notion of the political and law,<sup>10</sup> it should be first underlined that the law operates with a different binary code: instead of ‘friend/enemy’ it is the code of ‘legal/illegal.’<sup>11</sup>

<sup>1</sup> Cfr. Mańko R. “Reality is for Those Who Cannot Sustain the Dream”: Fantasies of Self in Legal Texts. Wrocław Review of Law, Administration and Economics, 2015, Vol. 5, issue 1.

<sup>2</sup> Žižek S. The Sublime Object of Ideology. London: Verso, 2008 [1989], p. 45.

<sup>3</sup> Marrani, D. Althusser in “Avatar”. In: Althusser and Law, ed. L. De Sutter. London: Routledge, 2013, p. 105.

<sup>4</sup> Garcia G. I., Aguilar Sanchez C. Psychoanalysis and politics: the theory of ideology in Slavoj Žižek. International Journal of Žižek Studies, 2008, Vol. 2, issue 3, p. 9.

<sup>5</sup> Žižek S. The Sublime Object of Ideology, p. 138.

<sup>6</sup> Schmitt, C. The Concept of the Political. Chicago-London: University of Chicago Press, 1996, pp. 25–26.

<sup>7</sup> Ibid., pp. 27–28, 37–39.

<sup>8</sup> Ibid., p. 26.

<sup>9</sup> See most recently: Mouffe C. Agonistics: Thinking the World Politically. London-New York, Verso: 2013, p. 1ff.

<sup>10</sup> Cfr. Stambulski M. Polityczność jako etyka polityczna prawa [The Political as Law’s Political Ethics]. In: Aksjologiczny wymiar prawa [Law’s Axiological Dimension], ed. M. Dudek, M. Stepień. Kraków: Nomos, 2015.

<sup>11</sup> Paździora M., Stambulski M. Co może dać nauce prawa polityczność? Przyczynek do dalszych badań [What Can the Concept of the Political Give to Legal Science? Notes Towards Further Investigations]. Archiwum Filozofii Prawa i Filozofii Społecznej, 2013, Vol. 8, p. 57.

The political is “a public and collective phenomenon, not to be confused with purely interpersonal animosities and conflict between private individuals”,<sup>12</sup> as Michael G. Salter points out.

In this paper, the concept of ‘legal interpretation’ will be understood broadly and sociologically, as the social practice of lawyers consisting of ‘*ius dicere*’, i.e., saying (*dicere*) what the law (*ius*) is on a given issue.<sup>13</sup> Hence, it will not be limited to interpreting the written law, be it legislation or precedent, but will also encompass the interpretation of unwritten law,<sup>14</sup> which was characteristic, for instance, for Roman private law of the classical period (wittingly described by Giaro by the quip of ‘interpretation of interpretation’<sup>15</sup>). Such interpretation was undoubtedly creative.<sup>16</sup>

The paper also assumes that legal interpretation is never fully determined by legal texts. This is because of two principal reasons. Firstly, because legal language is inherently open-textured.<sup>17</sup> Secondly, because vagueness is often introduced into legal texts on purpose, as is the case with general clauses and proportionality tests.<sup>18</sup> Thirdly, even if texts are written in a precise manner, and are not vague on purpose, it still happens that not all possible phenomena are foreseeable by the legislature, for instance, a new technology or a new social practice emerges, which needs to be ‘fitted into’ the existing legal framework. Indeed, every single court case exhibits ‘a distinct and unique element, a *moment of irreducible singularity*’.<sup>19</sup> Without entering into the problem of hard vs. easy cases,<sup>20</sup> for the purposes of further analysis it will be assumed that legal interpretation is never fully determined by the available legal materials.

<sup>12</sup> Salter M. G. *Carl Schmitt: Law as Politics, Ideology and Strategic Myth*. London-New York: Routledge, 2012, p. 30.

<sup>13</sup> Cfr. Lenaerts K., Gutiérrez-Fons J. A. To say what the law of the EU is: methods of interpretation and the European Court of Justice. *EUI Academy of European Law Distinguished Lectures No. 9/2013*.

<sup>14</sup> Cf. Świącicka P. *Ius civile quod sine scripto in sola prudentium interpretatione consistit* (Pomp. lib. Sing. Enchir. D. 1,2,2,12) – A Phenomenon of Positivation of Law in Dogmatic Discourse of Roman Jurists. *Constans et perpetua voluntas*. Trnava: Universitat Tyrnaviensis, 2014, pp. 577–590.

<sup>15</sup> Giaro T. *Wykładnia bez kodeksu. Uwagi historyczne o normatywności interpretacji prawniczej*. In: *Teoria i praktyka wykładni prawa*, Warszawa: Liber, 2005, pp. 17–18.

<sup>16</sup> Świącicka P. *Ius civile quod sine scripto in sola prudentium interpretatione consistit* (Pomp. lib. Sing. Enchir. D. 1,2,2,12) – A Phenomenon of Positivation of Law in Dogmatic Discourse of Roman Jurists. *Constans et perpetua voluntas*. Trnava: Universitat Tyrnaviensis, 2014, p. 584.

<sup>17</sup> Wojciechowski B. *Dyskrecjonalność sędziowska: Studium teoretycznoprawne*, Adam Marszałek 2004, p. 43.

<sup>18</sup> Vighi F. *The ambiguous remainder. Contemporary capitalism and the becoming law of the symptom*. *Žižek and Law*, ed. L. De Sutter. Abington: Routledge, 2015, p. 83; Schmitt C. *On the Three Types of Juristic Thought*. Westport: Praeger, 2004 [1934], p. 91.

<sup>19</sup> Salter M. G. *Carl Schmitt: Law as Politics, Ideology and Strategic Myth*. London-New York: Routledge, 2012, p. 102.

<sup>20</sup> Cf. Wojciechowski B. *Dyskrecjonalność*, pp. 38–39.

## 2. Role of the hegemonic ideology in the process of legal interpretation

### 2.1. General aspects

Since language as such is never conclusive for the outcome of legal interpretation,<sup>21</sup> in searching for the question how meaning (the outcome of interpretation) is produced,<sup>22</sup> focus must be shifted from the author (originalism) or the text itself (textualism) to the interpreter (e.g., judge) and, even more importantly, the legal community to which that interpreter belongs.<sup>23</sup> Nonetheless, the scope of possible interpretations seems to be limited by two factors, internal and external, both linked to the interpreter's membership in a concrete epistemic community at a concrete point in time. The interpreter is limited internally, in that the scope of the possible interpretations he can come up with is bound by the limits of his legal imagination, shaped both in the process of his legal education and legal practice.<sup>24</sup> Secondly, the interpreter is limited externally, due to the fact that legal discourse is based on persuasion, an intersubjective process, which is derived from commonly shared values and perspectives.<sup>25</sup> The interpreter must persuade his audience (e.g., the legal community), lest his argument will remain unpersuasive.

The question arises, therefore, what is the actual role of *ideology* in delimiting the legal interpreter's discretionary power of interpretation. And what is the interrelationship between ideology, as a limit to discretionary power when compared to politics, which also, undoubtedly, can play a limiting role with regard to the interpretive freedom, especially enjoyed by judges.<sup>26</sup> According to Hugh Collins, the hegemonic ideology "represents common sense understanding of the world and elementary principles of morality [...] directs the judicial sense of justice, and provides it with a sense of the relative weight of conflicting arguments."<sup>27</sup>

In this context, it is worth underlining that legal interpretation can be viewed either from a purely internal point of view, whereby it is governed by the methods of

<sup>21</sup> Kozak A. Granice prawniczej władzy dyskrecjonalnej [Limits of the Discretionary Power of Lawyers]. Wrocław: Kolonia Limited, 2002, p. 87.

<sup>22</sup> Cfr. Łachacz O., Mańko R. Multilingualism at the Court of Justice of the European Union: Theoretical and Practical Aspects. Studies in Logic, Grammar and Rhetoric, 2013, Vol. 34, p. 82.

<sup>23</sup> Kozak A. Granice prawniczej władzy dyskrecjonalnej. Wrocław: Kolonia Limited, 2002, pp.122–123; Stawicki T. O praktycznym zastosowaniu hermeneutyki w wykładni prawa. In: Winczorek P. (ed.). Teoria i praktyka wykładni prawa. Warszawa: Liber, 2005, pp. 96–97.

<sup>24</sup> Winter S. L. A Clearing in the Forest: Law, Life and Mind. Chicago–London: University of Chicago Press, 2001, p. 258.

<sup>25</sup> Kennedy D. A Critique of Adjudication {fin de siècle}. Cambridge MA: Harvard University Press, 1998, p. 161; Winter S. L. A Clearing in the Forest: Law, Life and Mind. Chicago–London: University of Chicago Press, 2001, p. 318; Kozak A. Granice prawniczej władzy dyskrecjonalnej [Limits of the Discretionary Power of Lawyers]. Wrocław: Kolonia Limited, 2002, pp. 166–169.

<sup>26</sup> Cf. Beck G. The Legal Reasoning of the Court of Justice of the EU. Oxford-Portland: Hart, 2012, pp. 446–447; Beck G. The Court of Justice, legal reasoning, and the *Pringle* Case-Law as the continuation of politics by other means. European Law Review, 2014, issue 2, pp. 234–250.

<sup>27</sup> Collins H. Marxism and Law. Oxford: OUP, 1988, p. 67.

interpretation (legal methodology), or from a purely external point of view, whereby interpretive decisions are seen as purely political ones, without paying attention to the institutional dynamics of the legal sub-world which produced them.<sup>28</sup> As Julie Novkov suggests, introducing ideology into the equation can help to bridge the gap between those two otherwise incompatible perspectives.<sup>29</sup>

Apart from the hegemonic ideology,<sup>30</sup> which upholds and preserves the *status quo*, there is a constant fight for hegemony fought by competing ideologies with different visions of the social, the political and the economic – for those ideologies, the law (or more precisely: litigation) is yet another field of struggle, in parallel, for instance, to parliamentary elections or lobbying. Indeed, proponents of competing ideologies can use the mechanics of legal interpretation to further their ideological goals. Duncan Kennedy refers to lawyers pursuing ideological projects through legal channels as ‘liminal jurists’,<sup>31</sup> differentiating between ‘cause lawyers’ and ‘believers’. ‘Cause lawyers’ treat legal interpretation purely cynically, manipulating legal materials to obtain the desired outcome.<sup>32</sup> ‘Believers’, in contrast, are convinced that the law already contains the solution they propose, which only needs to be fleshed out through appropriate means of interpretation, especially through induction/deduction and teleological methods.<sup>33</sup>

## 2.2. Method of interpretation and the influence of ideology

A commonly accepted division of modes of legal reasoning (directives or methods of interpretation) draws a tripartite division into: linguistic, systemic and teleological/functional. However, this division – despite its popularity and long-term acceptance in legal theory – fails to account for the richness of legal methods, especially in the context of the scope of juristic discretionary power exercised by judges within the scope of each method. It seems that a division of arguments should, first of all, be based on an opposition between exegetic (textual arguments) and non-exegetic (extra-textual) ones.<sup>34</sup> The *criterium divisionis* is whether the interpreter is ‘working on a text’ or whether the argumentation is based on other (extra-textual) factors. This division roughly corresponds to what Marcin Matczak refers

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<sup>28</sup> Novkov J. Law and Political Ideologies. In: The Oxford Handbook of Law and Politics. Eds. G. A. Caldeira, R. D. Kelement, K. E. Whittington. Oxford: Oxford University Press, 2008, p. 628.

<sup>29</sup> Ibid.

<sup>30</sup> Cf. Laclau E., Mouffe C. Hegemony and Socialist Strategy: Towards a Radical Democratic Politics. 2<sup>nd</sup> ed. London: Verso, 2001.

<sup>31</sup> Kennedy D. The Hermeneutic of Suspicion in Contemporary American Legal Thought. Law and Critique, 2015, Vol. 25, p. 114.

<sup>32</sup> Ibid., pp. 114–115.

<sup>33</sup> Ibid., p. 115.

<sup>34</sup> Cf. Mańko R. The Impact of EU Membership on Private Law Adjudication in Poland: A Case Study of the Polish Supreme Court’s Case Law on Unfair Terms in Consumer Contracts. Central European Judges Under the European Influence: The Transformative Power of the EU Revisited, ed. M. Bobek. Oxford: Hart, 2015, p. 77.

to as the division into ‘internal to the law’ and ‘external to the law’ (where ‘law’ is apparently equated with ‘legal texts’).<sup>35</sup>

Within exegetic arguments, at least three types need to be discerned: linguistic arguments (based on a linguistic analysis of the text);<sup>36</sup> logical arguments (based on the application of ‘juristic logic’, such as *exceptiones non sunt extendendae* or *inclusio unius est exclusio alterius*);<sup>37</sup> systemic arguments (based on the arrangement of a legal text or relationship between various legal texts in the legal system);<sup>38</sup> arguments from precedent (including the identification of *ratio decidendi* as opposed to *obiter dicta* and the art of distinguishing). Arguments from legal dogmatics<sup>39</sup> (based on the scientific analysis of legal concepts) belong to the group of exegetic arguments (since legal dogmatics itself focuses on the exegesis of legal texts, especially Codes), although, due to the lack of unanimity within the doctrine of law, they give judges a considerably greater freedom than, say, linguistic or logical arguments. Finally, arguments from legal principle<sup>40</sup> can be classified as exegetic, especially if the principles are explicitly codified in the legal texts (which is often the case) or are the result of a generalisation of more detailed rules codified in legal texts (which is the case in most other situations). Undoubtedly, they already give a considerable freedom to judges (even greater than arguments from legal dogmatics) and are on the borderline of the very concept of exegesis.

The group of non-exegetic arguments includes, essentially, four types of arguments: *intentionalist* arguments (based on the intent of the legislature, as reconstructed by the interpreter); *teleological* arguments (based on an objectively assessed purpose of the legal institution or norm or act); *consequentialist* arguments (based on the comparable consequences of various legal interpretations of the same norm);<sup>41</sup> and finally – arguments from *balancing*<sup>42</sup> (otherwise known as ‘balancing conflicting considerations’ or ‘reasoning from proportionality’). Intentionalist arguments – which are not directly based on the legal text – are still quite bound to an objectively existing intent of the historical legislator, where evidence can be

<sup>35</sup> Galligan D., Matczak M. Formalism in Post-communist Courts. Empirical Study on Judicial Discretion in Polish Administrative Courts Deciding Business Cases. *Judicial Reforms in Central and Eastern European Countries*, ed. Coman R. Van den Broel, 2007, pp. 236–237. Cfr. Mańko R. Use of Extra-Legal Arguments in the Judicial Interpretation of European Contract Law: A Case Study on *Aziz v CatalunyaCaixa* (CJEU, 14 March 2013, Case C-415/11). *Law and Forensic Science*, 2015, Vol. 10, issue 2, pp. 7–26.

<sup>36</sup> Including both the ordinary and technical (legal) meaning of terms of a legal text. Beck G. *The Legal Reasoning of the Court of Justice of the EU*. Oxford: Hart, 2012, p. 130.

<sup>37</sup> For Robert Alexy, these would fall under the category of ‘special legal arguments’, see *ibid.*, p. 127.

<sup>38</sup> For MacCormick, Summers and Taruffo (who created the so-called ‘MST typology’) this would correspond to their category of ‘contextual-harmonisation arguments’. See *ibid.*, p. 130.

<sup>39</sup> Under the MST typology these would fall under the category of ‘logical-conceptual arguments’ (*ibid.*, pp. 130–131), whilst for Alexy they would rather fall under the category of ‘systemic arguments’ (*ibid.*, pp. 126–127).

<sup>40</sup> *Ibid.*, p. 131.

<sup>41</sup> *Ibid.*, p. 119.

<sup>42</sup> This type of argument – as a distinct one – is specifically identified by Kennedy. Kennedy D., *The Hermeneutic*, p. 96.

adduced to limit the scope of the jurist's interpretive discretion (e.g., explanatory memorandum of a proposed legislative act; justification of an amendment; minutes of parliamentary debate).

*Teleological* arguments give the judge a greater degree of discretion, as they are not based on the objective intent of the historical legislator, but on the judge's conviction what the purpose of a norm should be. The degree of constraint in comparison to following the intent expressed in the *travaux préparatoires* is obviously greater.

The greatest degree of discretionary power is vested in the interpreter who engages into the exercise of *balancing*, especially that – as a rule – the hierarchy of conflicting interests or values is not predetermined, but requires to be 'weighed' *in casu*. This is the kind of reasoning into which constitutional courts or human rights courts often engage. The outcome of the case is in no way predetermined by any empirically available data, not to mention the legal texts. In the scale of indeterminacy, balancing is certainly at the apex.

### 2.3. Ideology vs. other factors

Legal methods determine, to a large extent, the scope of discretion enjoyed by interpreters, and that some methods are more *constraining* (like linguistic interpretation), whilst others are *openly discretionary* (like balancing). Accepting this premise does not, however, necessarily imply that the factor, which is 'filling in the gaps' left by legal texts, the *ius non scriptum* and interpretive methods applied thereto will be ideology. For it can simply be politics (as in the case of 'telephone law' in the communist period, and sometimes beyond), pure corruption, the judge's personal taste, and so forth. How can one be sure that it will be *ideology* that plays a role in the process? The answer is to be found in the very nature of ideology as such. As Althusser noted, ideology is invisible for those who are 'in it',<sup>43</sup> as it is perceived as the ordinary nature of things, common sense.<sup>44</sup> Hence, a judge who treats his *officium iudicis* seriously (i.e. impartially, objectively, etc.), will be all the more open to ideology, leading to the paradox: the more one tries to escape from ideology, the more one is enslaved in (the hegemonic) ideology. Schmitt's famous quip that the 'correct' judgment is the one that the judge thinks would be rendered by any other judge in the relevant legal community accurately captures this paradox.<sup>45</sup> As Mariano Croce and Andrea Salvatore paraphrase Schmitt's theorem, the judge should "[d]ecide in a predictable and justifiable manner, that is, only according to that maxim whereby you can, at the same time, *concretely* suppose that it can be *actually* adopted as a general rule by the *existing* legal community in your *particular*

<sup>43</sup> Althusser A. *Ideology...*, op. cit., p. 118.

<sup>44</sup> Collins H., op. cit., p. 67.

<sup>45</sup> Schmitt C. *Gesetz und Urteil*. München: C. H. Beck, 1969 [1912], p. 68: 'Eine richterliche Entscheidung ist heute dann richtig, wenn anzunehmen ist, dass ein anderer Richter ebenso entschieden hätte. "Ein anderer Richter" bedeutet hier den empirischen Typus des modernen rechtstheoretischen Juristen.'

culture (the judiciary as a concrete institutional order).<sup>46</sup> Therefore, the Schmittian correct judgment is precisely the one dictated by the big Other – the Symbolic order. If Schmitt questions the indeterminacy thesis, it is precisely because he relies on the hegemonic ideology as a uniformising factor.<sup>47</sup> Indeed, Schmitt’s “approach is based on the firm belief that legal determinacy can be guaranteed only if legal decisions are standardized and the orientation of judges is made homogenous.”<sup>48</sup>

### 3. The political character of the rule of law

As Evgeny Pashukanis pointed out already in 1924, the origin of law is in conflict.<sup>49</sup> And in the words of Michael G. Salter, “[a] Schmittian approach to law is committed to the idea that being human involves immersion in ever-present possibilities for collective conflict arising from virtually every conceivable form of social activity.”<sup>50</sup> Law’s vocation is precisely the conflict resolution, in which there are always plaintiffs and defendants, prosecutors and the indicted – and, once a judgment is handed down by the courts – winners and losers in each and every case. Law is precisely about conflict, hence law is, by its very nature, political, because the conflicts of individual parties are usually individual instances of conflicts of larger social groups. Thus, a court’s decision to favour a worker over an employer (or vice versa), a trader over a consumer (or vice versa), a landlord over a tenant (or vice versa) are – by their very nature – *political* decisions. This need not signify that they belong to the sphere of *politics* (party politics), but they do belong to the sphere of *the political*. And, whilst some of these *political* conflicts can be fought out at the stage of legislation, due to the inherent indeterminacy of legal language, they will have to be settled – at least in part – at the stage of adjudication. If linguistic interpretation gives rise to various possible answers; if systemic arguments point in both directions; if a court needs to fill in the content of a general clause; if the law is to be interpreted purposefully; or if the court needs to balance the rights of one class (e.g. businesses) with the rights of another class (e.g. employees) – in all these situations ideology comes into play, guiding the judges’ decision. And the more the judge wants to be ‘objective’ and ‘apolitical’, the more he tries to render a ‘correct’ decision that an ideal-type of judge in the same jurisdiction would render, the more he falls prey to the hegemonic ideology, representing the big Other of the Symbolic order.

However, “the dominant ideology is neither static nor unchallenged,”<sup>51</sup> which opens the door to struggles for either reforming the dominant ideology or challenging its hegemony. Such struggles are also played out in the legal field, where they can either take a covert or overt form. In covert form, they are framed in purely legal

<sup>46</sup> Croce M., Salvatore A. *The Legal Theory of Carl Schmitt*. Abington: Routledge, 2013, p. 148.

<sup>47</sup> Cfr. *Ibid.*, p. 149.

<sup>48</sup> *Ibid.*

<sup>49</sup> Pashukanis E. B. *Law and Marxism: A General Theory*. London: Pluto Press, 1983 [1924], p. 81.

<sup>50</sup> Salter M. G. *Carl Schmitt: Law as Politics, Ideology and Strategic Myth*, p. 30.

<sup>51</sup> Collins H. *Marxism and Law*, p. 71.

terms as discussions on legal interpretation (with the use of the exegetic methods of interpretation described above). They may, however, enter in more or less overt form in teleological reasoning and in balancing. In these modes of lawyers' reasoning – which are closer to general practical reasoning than to legal exegesis – the ideological considerations can be more or less openly voiced.

## Conclusions

1. Due to the unavoidable indeterminacy of legal language and the impossibility of predicting all possible future situations, legal interpretation always involves a certain degree of discretionality.
2. That degree of discretionality depends, in principle, on the interpretive method used.
3. Interpreters tend to fill in the gaps left by the legal materials by solutions consistent with the hegemonic ideology.
4. However, the hegemonic ideology is neither stable nor unchallenged, making the law a venue of ideological struggle, open or covert.
5. The role of ideology in legal interpretation is political, in the sense that it determines the outcome of fundamental antagonisms within society, in particular those of an economic character.

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