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Editorial Introduction

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1 Prologue

This Special Issue (SI) had been originally intended as an opportunity for interim dialogue in anticipation of the 23rd International Roundtable for the Semiotics of Law (IRSL), now postponed to 2023. Many of the essays, moreover, are the outcome of a Webinar, held online on September 16, 2021. Our aim in launching both the SI and the related Webinar was to promote a polyphonic and interdisciplinary elaboration of a kind of theoretical prolegomena to the 23rd IRSL. More specifically, we were interested in adopting contemporary global semiotics as a lens for a renewed analysis of the relationship between 'facticity' and 'normativity' in legal experience; under this lens, what would be the consequences for legal theory?

In an attempt to stimulate and encourage the submission of papers, we invited participants to consider the following questions and issues.

Does the consideration of the contemporary dynamics of socio-communicative space impinge on the traditional positivist-inspired divide between 'facticity' and 'normativity'? And, more specifically, to what extent does this affection—if any—retroact on the semantics of law as well as the prerequisites for the legitimation of legal systems?

In order to answer the above questions, we asked the contributors to the SI and the participants to the Webinar to consider the following remarks.

The traditional positivist approach to the relationship between facts and legal rules is grounded on the 'quasi-mantric' assumption that 'law makes its own facts.'[1] This theoretical and hermeneutical axiom, in turn, stems from the conviction that deontic languages, including the legal one, constitutively determine and select what is relevant for their universes of discourse and their pragmatic projections. Both these

[1] See, among many others, [20, 23], 25–26, 34–35, 15, 8, 13].

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postulations rely upon the is/ought divide and, at the same time, the rejection of any kind of moral consequentialism. Nonetheless, the question remains of how much the above tenets of positivism—as well as analytical jurisprudence—rest on a socio-communicative pre-condition that takes for granted the 'subsistence' of a homogeneous cultural environment and a kind of semantic social contract.[2] In other words, to what extent does the is/ought divide rely on the pre-existence of an objectification of what facts are—as such separated and independent from values? Is this divide not rooted in the epistemology of Western secularization and the objective/subjective divide that stems from an absolute distinction between external forum and internal forum? Does this not result in a tacit ontologization of the products provided by an equally silent semantic social contract about those facts and the related categorizations?[3]

And still, what happens, firstly from an epistemological point of view, if the cultural conditions underlying the 'validity' of the semantic social contract expire, or no longer apply to a given experiential and communicative environment? Insofar as these cultural boundary conditions of factual objectivity undergo a change, are the categorical assumptions of the factual dimension to be dismissed, or abandoned? And what about the role they play inside the phrastic/descriptive parts of legal rules?

The above sequence of issues becomes even more thorny given that the 'facts' legal language uses are not only products of a self-referential linguistic function, as could be said of the terms 'contract', 'inheritance', 'corporation', 'property', etc. These categories are, instead, also embedded—often implicitly—with other innumerable categories pertaining to or drawn from other 'non-legal' languages (including the so-called 'natural language': *whatever it may be*). Under these conditions—which correspond to any experiential world undergoing changes to its cultural or natural environmental phenomena and processes-—the objective world of facts that is assumed to be divided from the subjective dimensions of values should, rather, be re-semanticized and 're-made.'[4] And yet, at that point will not the extra-legal 'facts' (still encapsulated in law's discourse) and their objectivity inevitably show their cultural and thereby axiological constitutive components/determinants (once again)?

A global semiotics of contemporary social and legal experience is coextensive with the interaction among multiple 'worlds of facts' as well as different axiological ones. Consequentially, when molding what is relevant in the phenomenal world for its own ends against the foil of this global interplay, the legal language can no longer assume an axiologically neutral dimension of the extra-legal facts that it however includes. On the contrary, the subjectivity/value-laden origin of the multifarious 'factualities' at stake cannot remain encapsulated and, in a sense, dissimulated by a culturally taken-for-granted objectivity of 'the World.' The 'Fact', in tune with its etymological origin (*factum*, from Latin '*facere*'), unveils that its assumed objective existence is something 'made' (precisely: '*factum*') by someone: in other words, it is not an origi-

[2] [14]

[3] [22, 10, 11, 18]

[4] [27, 5, 21].

nal unauthored 'datum' but a proactive[5] and enactive 'result;'[6] as, on the other hand, Vico had already pointed out in his criticism against Hobbes.[7] This implies that anything that is assumed as a fact constitutes, in any case, the morphological emergence of an underlying relationship, or better, an ongoing relational process of which the categorical morphology is only one interlocutory stable state (relative, and thereby silently morphing).[8] Representations of facts and their categorical schemas are only that which remains of human consciousness and discourse (in the form of cognitive/behavioral scripts, habits and schemata) filtered out of a semiotic dynamic stream after the subtraction of the subjective/proactive part of the phenomenal relationship.

This means that the semantic social contract that determines the cultural objective world of facts does not engender a neutral picture of something extant 'out there.' Conversely, it produces a collection of categories consisting of enactive projections historically and proactively gushing out from the ongoing and unremitting relational interplay between the subject/organism and the environment surrounding its living action. Each representation and the morphological categorical features it includes functions, in turn, as an instrument supporting the adaptive re-enaction of the organism/environment relationship. From this perspective, morphological 'figurations' and categories are to be thought of as proactive epitomes that bridge past and future relational experiences in a transformative way. Their meaning and the coherence of the overall knowledge system is a consequence of the future transactions taking place on the edge of the renewing of experience. Objective worlds stemming from those transactions are, therefore, not only subjective representations but also existing worlds, a substantial portion of which, however, remains invisible, silent, implicit, or beyond the frontiers of representations. Exactly this semiotic exceedance[9] makes it so that the interaction between different cultural worlds or the alteration of the environmental boundary conditions of previous categorizations redefine through a necessary translational process the space of implicitness/invisibility impelling a transformation in the meaning of their morphological features. The semiotic landscapes underlying, and epitomized by, factual categories are comprised of elements spread across time and geographical space, so that the objective meaning of what is perceived as present 'here' and 'now' turns out to be imbued with multiple time and spatial 'elsewheres' or 'remoteness.' The more culturally different people and phenomena of various sorts (biological, geological, etc.) come into contact, the more such multiple otherness and their semiotic clouds interpenetrate, generating a constellation of thirdness from the 'height' of which past categorizations must be 're-semanticized' and systematically made 'consistent'.

What about values/ends and legal meanings, then? What is their role in the above process of experiential and semantic transfiguration? In an environment

[5] [12, 17, 24].

[6] [7, 9].

[7] [29–30].

[8] See, for example, [32–33] and [16] (even if the last author infers from the relationality underlying both the phenomenal and the sensory world some cognitive and economic-political implications exceeding—to be ideologically neutral—the main topic of this SI.

[9] [1–3].

coextensive with global semiotics, manifold objective worlds will compete against each other, so that any choice about which properties and connotations to include in the individual and or social acts of categorization will have to measure itself against the exceeding axiological relevance of what is excluded by the setting out of the categorical boundaries used to qualify the factual situations and/or items. The consequences on the semantics of values that flow out from the dynamics triggered by such exceedance also apply to legal systems, insofar as these are universes of discourse designed to yield pragmatic projections. Axiological exceedance and the related relevance of what is left outside the acts of categorization carried out by all kinds of languages, including the legal one, is also semiotic. More specifically, from a legal point of view, it can convey the involvement of values different from those considered by legal languages or authorities when forging the boundaries of which aspects of the phenomenal world are relevant for a specific/local law or legal system. But the ensuing interplay and interrelationship among values can redefine, in turn, the semantic scope of each of them and, as in a kind of semantic roundabout, the way they will affect the selection of properties and connotations to be assumed in defining the factual objective world by legal discourse as well as other languages. This is because the values on which the legitimacy of legal systems is culturally and politically grounded are ultimately 'continuous' and coextensive with those encapsulated in the 'semantic social contract' underpinning other languages, including the natural one. More in general, intercultural as well as inter-natural inter-spaces of experience and signification so taking shape will form the cradle (or, in Plato's words: the receptacle—see *Timaeus*) for a renewed threshold of the world(s)' objectivity[10]. Against the foil of these renewed 'factualities' and the subsequent disappearance/subtraction of their subjective/axiological components—made possible by the upgrading of the above semantic social contract—is/ought and values/facts divides can thus be reinstated, even alongside the logic of positivist and/or analytical jurisprudence and practice. This state will only last, however, until the inner mobility of global semiotics begins again. A kind of cyclic process of inner transformation[11] underlying the phenomenal unfolding of legal experience thus looms, due to the inherent openness and transactional[12] meaning of categorizations and their constitutive attempt to grasp the future. The question that arises, therefore, is whether the study of these features/factors of legal experience should remain outside the province of legal theory as well as the practice of law, as the positivist, formalistic and analytical approaches contend; or, instead, if the allegedly 'descriptive'/scientific assumptions behind the positivist 'concept of law' are a mere consequence of a semio-ideological[13] understanding of modern categorization and its application to the understanding of legal experience.

The original call for papers was designed to prompt multidisciplinary theoretical and pragmatic research proposals aiming at analyzing the implications of the spatial dynamics of legal experience. The authors of the contributions included in the special issue addressed the above questions from a multiplicity of theoretical perspectives

[10] [28].

[11] [30: p. 301–327; 31].

[12] [6].

[13] [19].

and, in their variety, proffer to the reader a multifaceted assessment of the current 'state of the art' of research on the relationship between 'facticity' and 'normativity' in the legal field and beyond. The essays comprising the SI are respectively grouped into three sections according to a thematic ground identified as thread of continuity among them, notwithstanding, but also precisely on account of, their different theoretical approaches.

2 First Section

2.1 The Mutual Immanence of Facticity and Normativity?

The first section gathers essays that, from different angles and critical viewpoints, bring to the fore the conflation between facts and norms (as well as values) inherent in experience at large and, more specifically, in the legal one when they are considered as 'phenomena.'

Pennti Määttänen's essay addresses the facts/value divide in its Humean roots. His approach draws inspiration from the pragmatist theory of knowledge and—at least, in this paper—more precisely Dewey's operational and transactional approach to cognitive activity. The pivotal critical node of Määttänen's rejection of Hume's tenet about the facts/values ontological dis-continuity is the so-called theory of embodied experience. The proactive function of the body in molding the unfolding of experience makes so that 'facts are imbued with bodily activity' and, symmetrically, 'the perceptive universe' stems from the ongoing transactional interpenetration between the body and the world. The above mutual transformative interplay implies that any clear separation between the axiological dimension and the factual one, the mind and the environment, the internal and the external, and so on, is incompatible with the interactional 'matter' of experience and its underlying continuity. Even if Määttänen does not deal with the theoretical question that embodiment theory presents to the conceptualization of modern law, nonetheless the perspicuity of his criticism of the Humean divide may be regarded as a 'sting' to the basic assumptions of modern legal theory and the endless forest of epistemological/ontological distinctions which it relies on. This is even more discernible when the operational and transactional continuity between body and environment is interpreted in semiotic terms. It is so because assuming the 'semiotic continuity' between mind and the world, human language and experience, etc. makes contingent the separability of axiological judgments, on one side, and factual statements, on the other. Their respective validity is to be deemed as merely heuristic and, in and of itself, devoid of any ontological autonomy. Consequentially, the self-referentiality of law, as a province of the general realm of 'ought,' can be held as significant only as long as it is underpinned by the permanence of implicitly presupposed boundary conditions, or the presence of an overdetermining contextual framework. Such a surrounding context, however, is nothing but space, insofar as it is a datum that is already semanticized when it is perceived as a 'pre-given' constant of experience. What does the above semiotic continuity between space and categories of thought imply for the self-referentiality and the legitimacy of law when the spatial determinants of spatial experience are in turmoil?

Such a question, springing forth from Määttänen's inquiry, is perfectly in tune with the 'seminal reasoning' of this SI and efficaciously ushers the reader into the battery of arguments articulated in the essays that follow.

Andreas Philippopoulos-Mihalopoulos' essay embeds the implications of embodiment on the facts/values relationship within an overall post-Luhmannian and Deleuzian framework. According to the critical perspective he proffers, law is a pervasive existential and cognitive dimension. If we think of human beings as fish, then law is the water in which they swim, breath, and live by. In a sense, like the ocean for fish, law is imbued in the living flesh of humans and they themselves are coextensive with the moving matter of the watery realm. Philippopoulos-Mihalopoulos warns us that facts and values already melt into one another in the extant world. Law is epitomized and embodied in everything, from pavements to lights, from buildings to our bodies and their rhythmic interplaying, and so on. It is like the atmosphere from which it is—allegedly—impossible to escape without dying. Both the readable and the tacit/invisible parts of law are only the agents of a false dialectic that always stages the same overdetermined script. The logic of systemic differentiation is the motor of a fatuous dynamic, which proves to be functional only to the immanent stillness of the whole system (or, metaphorically, the ocean mass). And yet, there is an extravagant possibility: launching out of the earth's atmosphere on a rocket or, for fish, leaping out of the water. Neither human beings nor fish can remain outside their 'atmosphere' for very long, and yet from outside they can, even if only briefly, see the surface of that which contains their lives. This ephemeral condition has been called in the past 'Apollo's eye,'[14] and the observed surface of the Earth has been viewed as a kind of cognitive frontier, a changing skin which, when it appears, makes different the differences, the inside and the outside. The matter of that skin is coextensive with distance, the self-distancing inherent in the launching out. That matter is the emergence of a new space, the space of a thirdness. Just as when a human being stands in front of a mirror, distance is a necessary condition for seeing one's own image. The more the distance from the surface of the mirror is reduced, the more the image contracts, all the way up to the moment when it vanishes entirely. This dynamic is the same one that exists between symbolized law and tacit, omni-pervasive law. Although in the Luhmannian systemic universe of discourse that Philippopoulos-Mihalopoulos evokes the subjects are nothing but vehicles subsumed by law's dynamic, nonetheless their launching out /mirroring makes perceptible the generative substance of self-distancing, its being the receptacle of a possible and unpredictable 'novelty.' This renewing mirror-effect can be traced even in the relationship between the linguistically symbolized law and the mute 'legality' diluted in the lawscape, especially in multilayered legal systems. Actually, law cannot avoid (the case of) looking at itself through the decentered and propelled gaze of its own 'subjects/molecules.' That is the exact point at which the dialectic of systemic differentiation makes room for the emergence of something new. This 'something' comes from an initial undetermined space in which the same all-comprehensive system takes is spatialized shape. Its origin is a kind of origin-before-the-postulated-origin of the extant system of systems, the whole that encompasses everything. This is the case despite the final series

[14] See [4].

of sentences concluding Philippopoulos-Mihalopoulos' essay: "A law that needs no mirror, just horizon. A law of surface signalling depth. You are part of a collective, an assemblage, a line of flight. You are no longer just you. You are not just you. You, all of you, are the law. And that might be the law you really need."

In that 'might', in its semiotically suspended space/time, Philippopoulos-Mihalopoulos is actually, as the very author of his own critical paper, one of the endless incarnations of Apollonian eyes. Like an ephemeral spark, his being both observer and inventor (a role inherent in his authorship) portends a possible unprecedented ripple of the all-engulfing legal whole. Whether it is part of the imminent future or not, that spark enshrines a combination of signs that has however occurred within the oceanic and ungraspable 'receptacle' that this very whole is (whatever it is, whatsit, as an unutterable 'something'). This event can contaminate the lawscape and affect the 'semiotic resistance of every possible over-coding atmosphere.' Of course, it (the semiotic spark) and the author are doomed to transfigure themselves in a new lawscape, but it is precisely in that passage, coincident with the dwelling time/space of a spark, that Mihalopoulos has been able to conceive of the paper. This occurrence does not exclude that categories and metaphors are twins, and that in their rigidity and deadness, respectively, they play the role of theatrical cages. And yet, the combination of 'categorization and metaphorization,' if intended as an unremitting activity and destiny, makes 'Penelope the un-weaver' an icon of the most wonderful gift that humanity possesses. That is, a human experiential world that is inherently 'open to incompleteness,' which means that it will perpetually remain astride Eden's boundaries. Precisely there, along that ridge, values and facts disengage from one another to reinstate their processive rapprochement in an endlessly iterated and self-transforming becoming.

In "Constructivist Facts as the Bridge Between Is and Ought", **Jaap Hage** introduces and characterizes in depth a distinctive category of facts, which thus far have not been explicitly acknowledged as irreducible to either objective facts and subjective facts. In Hage's theoretical framework, social facts—the facts law is made of, at least in the positivist legal tradition—are neither objective nor subjective. Likewise importantly, social facts do not constitute a monolithic category. For they can be internally divided into constructivist facts and non-constructivist facts. The existence and contents of the latter are set by social consensus: it is the consensus between the members of a social group that establishes something as a social fact of this kind. By contrast, constructivist facts are at least in part established by rational considerations. Constructivist facts, as Hage characterizes them, are social entities that are not merely recognised but rather that ought to be recognized (at least within the relevant social group). Apparently, this means that there is a kind of social facts—constructivist facts—that bridges the conceptual gap between "Is" and "Ought", since (to put it bluntly) ultimately a constructivist fact *is* what it *ought* to be. On this basis, Hage calls into question the thesis of the non-derivability of ought-judgments from only is-judgments. The theoretical implications of Hage's construction, thus, are wide-encompassing and go well beyond the province of legal theory.

Paolo Di Lucia and Lorenzo Passerini Glazel explore the semiotics of the normative. In their "Towards a Sigmatics of the Word 'Norm'", Di Lucia and Passerini Glazel critically engage with the legal positivist and realist claim that the law must

be investigated as an empirical phenomenon. This claim led many champions of legal positivism to theorize the conception of law as language, in accordance to which theories of law ultimately are theories about legal language. By building on the distinction between dianoetic validity and deontic validity, they go on to defend the view that the validity of norms cannot be investigated only with reference to the *semantical* and *syntactical* properties of normative propositions. This view paves the way not only for a radical rethinking of law and its norms, which can hardly be understood in merely linguistic terms, but also for an abandonment of the positivist assumption that the conceptual tools of semiotics are fundamental for the investigation of normative phenomena.

In the first part of his essay, **Paolo Heritier** addresses the Is/Ought divide by treating it as a problem of law and literature. To this end, he starts from the reconstruction regarding the divide proffered by Siniscalchi and Kneale based on the concept of 'normality.' The reading of the fact/value dichotomy suggested by Siniscalchi is developed against the background of novels by authors such as Kafka and Matheson. Heritier proposes to move the issue of the relationship between law and morality to a different sphere: the fictional, literary and phantasmatic dimension of the foundation of law, as proposed by both Vico and Legendre in their legal juridical aesthetics. Subsequently, Heritier analyzes the different views that emerge from Fuller, Hart and Nagel with respect to the concept of 'end' and, more specifically, Fuller's reading of legal realism. The latter, in particular, is interpreted through the category of 'narrativity' and the cruciality of its dynamics. In the same essay, moreover, the legal-moral interpretation of the fact/value divide as delineated in the Humean approach is critically examined through the epistemological reading of Hume's thought proposed by Hayek and Popper. Ultimately, Heritier follows the interpretation of the Hart/Fuller debate that Manderson develops—moving from a 'law and literature' approach—by emphasizing the need to adopt a dialectical perspective so as not to overlook the phantasmatic meaning of legal interpretation. The ghost of undecidability, understood à la Derrida, as it emerges within this debate pushes towards a reconsideration of the legal method in rhetorical and affective terms, as such inspired by Vichian theory. All this is ultimately aimed at conveying an aesthetic and embodied approach to the conceptual distinctions that are usually applied in dealing with everyday legal issues. Heritier concludes with the idea that 'visible facts' have a hybrid aspect that cannot be concealed.

3 Second Section

3.1 The Hybrid Evidence of "Visible" Facts

In this section the thematic ground that serves as a catalyst is the relationship between 'evidence' and the semiotic presuppositions in which its factual clarity floats. From different perspectives, the essays grouped within it address the relationship between the 'visible' and the 'invisible' with respect to the possibility of determining the meaning of law and its rules. What seems to imply, *inter alia*, that the debate on

the distinction between facts and values is also to focus on the relationship between politics, law, technology, media system and, more in general, all kinds of artifacts.

The problem of images as related to the tacit dimension of the legal is also the subject of **Richard Sherwin**'s article, which focuses on the second impeachment trial of Donald Trump. As in the case examined by Tuzet on the role of scientific experts in trials (next paper), Sherwin analyzes the role of images in argumentation, moving from the delicate relationship between the political and the defense of democracy. The distinction between democracies and illiberal regimes is based on processes of identification with the leader that are amplified by social networks today. Such is the case with regard to the impact of Trump's speeches during the January 6th, 2020, insurrectionary events at the White House. He notes: "Trump's video may be characterized as a performative speech act. The video was designed to provoke unusually intense emotional states ranging from fear of an imminent threat to national security, shared tribal identity." Sherwin's analysis focuses on the fact that the two-minute rally video delivered by the president an hour before the speech was totally ignored in the trial for incitement to insurrection following the events. Its activation of "tacit knowledge" was not recognized. Sherwin affirms that the video escaped any rational criticism due to a general unawareness of the normative role of images. The paper promotes a systematic deconstruction of Trump's messages, showing the possible perverse effects of the use of images in political debate in contemporary democracies when criticism is absent. If what people see on the screen is perceived as real, an associational logic operates—largely subconsciously—as tacit juridical knowledge. Much like the classical enthymeme as an incomplete syllogism, its efficacy depends upon an implicit premise that is activated but never articulated.

Giovanni Tuzet analyzes the role of experts in trials from a methodological point of view. More specifically, he problematizes the semiotic toolkit legal systems make use of in factfinding, particularly in the assessment of burden of proof. He underlines how the nexus between image and evidence inevitably encounters several theoretical problems, which are anything but easy to solve. In this regard, he emphasizes that the activity of factfinders in legal theory must be properly understood and interpreted. Factfinders are unable to form a justified belief about the matter to be judged, nor can they legitimize the acceptance of a given expert testimony, until they understand or come to appreciate some of its determined relevant aspects. The essay provides an analysis of the "Daubert trilogy," and in particular the case Kumho Tire Co. v. Carmichael. The author's semiotic approach, which draws on Peirce and Millikan's theories, is carried out by applying the Peircean threefold definition of the sign to the Kumho case in order to show that images and evidence, even when part of factfinding, require precise theoretical understanding. In this regard, Tuzet also underlines from his perspective that "Theory without ostension is void, but ostension without theory and inference is blind." Therefore, even the activity of scientific experts in the trial should not lead (and anyway, it could not) to a naïve conception of legal facts and their interpretation. Conversely, "ostensive acts and actual indices must be supplemented with adequate theory and inference." In conclusion, if theories and inferences can fail to represent the real, then decisions based on burden of proof are also not always able to solve the problems that thwart the emergence of an appropri-

ate legal answer. And this, even though in many cases burden of proof still remains the best strategy available to deal with the highlighted epistemological difficulties.

In their study ("Regulatory Artifacts: Prescribing, Constituting, Steering"), **Giuseppe Lorini, Stefano Moroni and Olimpia Loddo** are concerned with a distinctive form of artifacts: *regulatory* artifacts. Lorini, Moroni and Loddo claims that we are confronted with different kinds of artifacts. First, there are *technical* artifacts, which are instrumental to the performance of action and thus perform a merely causal function. Technical artifacts are on this basis irreducible to *cognitive* artifacts, which play the conceptually distinct role of improving human cognitive performances. Technical artifacts and cognitive artifacts hardly exhaust the category of human made facts. A further kind of artifacts, which is of special importance for the legal domain, is that of *regulatory* artifacts, namely, artifacts that are introduced to govern human behavior by performing a prescriptive, constitutive or steering function. Among the regulatory artifacts they figure entities such as roundabouts, traffic lights and speed bumps. Those entities are human-made—they are artifacts—that are associated with a regulatory quality. More specifically, Lorini, Moroni and Loddo argue, regulatory artifacts perform three wide-ranging functions in our lives. Some regulatory artifacts prohibit or impose certain courses of conduct. On this basis, they are called "prescriptive" regulatory artifacts. Others are constitutive in quality: they "do things" or produce the results they are introduced to produce immediately. Examples of these artifacts are the demarcation stones determining the boundaries of a plot of land. Finally, there are the "steering" regulatory artifacts, which lack any deontic or more generally normative force. Think of a speed bump, which neither prescribes nor constitutes and yet succeeds to regulate our behavior.

The essay by **Simlen Markov**, **Rebecca White** and **Peter Petkoff** takes the reader through the history of theological speculative thought and its unremitting wobbling across light and darkness, knowledge and mystery, the visible and the invisible, legal rules and the implicit semiotic surroundings that keep their meaning afloat. The authors propose an interreligious journey through Christian, Islamic and Jewish theologies, straddling the dialectical relationship between the 'cataphatic' and the 'apophatic' approach to God and the asymptotic cognitive *approximating* of Him. What is of the utmost relevance for the pivotal questions addressed in the SI is the generative movement from what 'is' towards what 'is not', the positive to the negative, and back again. A going backwards that finds its starting point, the positive, to be always and unavoidably changed. This dialectical speculative transfiguration depends on the transcendence of God and of meaning, with respect to any opposition and its constitutive terms. Mirrored in the theological swinging between what God *is* and what God *is not*, the authors lead us to recognize the relationship between what *law* is and what it is not, what *facts* are and what they are not, evidenced in the semiotic landscapes it overshadows with its (alleged) dazzling meaningfulness. The fruitful merging of light and dark, being and non-being, positive and negative, makes so that its final result, in itself only asymptotically achievable, is equivalent to the outcome of an always renewed molding of categories, their 'inside' and their 'outside.' This process, however, boils down to a value-laden culling among the elements populating the semiotic continuity produced by the dialectical movement across the originally opposed and polarized universes of discourse. What surges up from the

overall process is a thirdness involving, in its generation, a value-laden and aesthetically oriented culling of denotative and connotative features from the unbounded and seamless semiotic landscape that emerges from the interpenetration of the visible and the invisible, positive and negative, light and dark. In the same vein, through their self-distancing and the ensuing rapprochement—something strongly recalling the law's self-mirroring process disconsolately evoked by Philippopoulos-Mihalopoulos in his essay—even formalized legal rules can translate into the factual (allegedly: non-legal) dimension enshrining, instead, the invisible (part of the same visible) law. Markow, White and Petkoff give the reader a shrewd insight that allows us to come full circle after the previous essays and realize the relativity of any apparent stillness and self-referentiality when taken as inherent features of legal meanings and their pursued certainty, objectivity and unrelatedness to the domains of non-law, subjectivity, internal forum, etc. The whole myth of the self-evidence of both facts and legally objectivized values, namely the nub of secularization and its epistemology, seems to emerge as debunked by the 'cognitive experience' recounted by the authors. The dialectic of the 'cataphatic' and the 'apophatic' that they trace back in historical religious legal experience involves a blurring between facts and values, objectivity and subjectivity, as such processively and anthropologically underlying any kind of 'entification.' By reconstructing the seminal roots of an overgrown path of human knowledge, they unveil the 'teleological constructive fulcrum' of any morphological structure which the human mind assumes to be an embodied reification of the world's meaning.

4 Third Section

4.1 Legal Categories and the Semiosis of Space

The essays grouped in this section are linked by their focus on the plasticity of both categories and categorization processes. More specifically, even if once again from different perspectives, the authors are concerned with investigating how categorical frames falter when they come into contact with the spatial-semiotic fluctuation which experience forces legal interpretation to reckon with. Along different paths, the essays show that the dynamics of space is to be intended as a signical flow that, as such, relativizes the outside/inside divide underlying the morphological structures of categories.

Mateusz Zeifert's essay takes its cue from Eleanor Rosch's hypothesis regarding a psycho-cognitive operational device that she labels 'basic level categorization.' Closely related to her famous 'prototype theory', this theoretical paradigm should explain the way in which the human mind produces categorizations in order to both recognize and mold discontinuities within the phenomenal world so as to manage them for adaptive/functional purposes. The author analyzes the internal articulations of Rosch's proposal stressing how it is only successful with regard to *relatively* abstract categorizations. The vagueness and indeterminacy of 'superordinate' or 'highly abstract' categories ends up disabling the explicative scope of both the Aristotelian essentializing categorical checklists of features as well as the center/periphery

scheme suggested by Rosch in the attempt to combine Wittgenstein's 'family resemblances' with the morphological portrayal of categorical frames. Zeifert insightfully argues that abstraction is the other side of the inner purpose of categorization, which is the aim to orient an organism's behavior to the world through and despite the different situations that give rhythm to its unremitting unfolding. Turning to the law and, more specifically, legal language, the author shows how the 'basic level category' theory, by and large, is ultimately inapplicable. Through an array of lucid examples, he shows that 'indeterminacy' and 'intercategoriality' (even if Zeifert does not use this term) are the main instruments lawmakers make use of to face the unpredictably of experience and the dynamics of the phenomenal world. The reason the linguistic and categorizing attitude of lawyers is at odds with the 'basic level category' paradigm and its alleged explicative power with regard to natural language is not investigated in this essay. Nonetheless the critical assessment of Rosch's approach that Zeifert develops here paves the way for further explorations of the relationships between legal categorization and the facts/norms divide put forward by the other essays gathered in this section.

In "Where Objective Facts and Norms Meet (and What This Means for Law)," **Stefano Bertea** sets out to defend the claim that no sharp separation exists between facts and values. His argument, which relies on the recent developments of both action theory and epistemology, is not meant to deny the conceptual distinction between facts and norms, which are claimed to refer to two distinct and mutually irreducible categories of thought. Nonetheless, it is claimed in this contribution, such a distinction cannot be cashed out in terms of a dichotomy, or conceptual divide, which is radical and unbridgeable. For, facts and norms, whilst distinct, are deeply entangled and irreducibly interdependent categories of thought. This statement has important legal implications. On the one hand, it means that in legal practice there can be no principled separation between factual findings and legal conclusions. This claim is in stark contrast with the consolidated and traditional approach to facts and norms in legal proceedings. On the other hand, the stance defended by Bertea in this contribution supports the conclusion that law, when it is understood as a normative practice, affords a space in which rational debate is possible and normative disagreements can be worked out rationally. In turn, this statement paves the way for the claim that rational deliberation is central to the legal domain and so that law is to be conceived as a practice structured around rational processes of deliberative argumentation.

Elena Ioriatti analyzes the relationship between facticity and normativity through the spectrum of the semantic-spatial transformations involved in EU legal experience. Her essay focuses on the binomial potentiality/effectiveness related to the semantic unity of legal categorization across and in spite of the cultural and normative differences of the EU member states. The question she raises is as follows: is the normogenetic top-down lawmaking process of the EU able to assure the semantic homogeneity of the interpenetration and application of the rules it produces? The answer Ioriatti gives is positive. Such outcome is reached through an original examination of the 'trans-spatial' and 'trans-legal' paths *plotted* by the words 'possession' and 'waste' in their applicative wanderings across the EU member states. The conclusion of Ioriatti's semiotic analysis of the transnational adaptation of the word 'possession' related to 'waste' is that a kind of semantic/regulatory homogeneity is

provided by the polyphonic activities of institutional agencies throughout Europe. At the same time, however, it is very difficult to establish whether that homogeneity is due to a homologating and homologated attitude of each country regarding original European legal standards, or, rather, if the observed semantic homogeneity stems from a retrospective reconstruction of the 'authentic meaning' of European rules. By and large, the latter interpretation of the process underlying the recorded homogeneity seems to correspond to what has actually taken place. The abstract categorization linguistically provided by the EU lawmaker in the 2018 EU Framework Directive on Waste (art. 3. N. 6) underwent a dialectic transformation through its contact with the various socio-cultural environments of each different European country. The EU 'waste holder' and the 'locally embedded people holding waste' are the wings of a mutual translational process that ends up embodying 'law' in 'waste experience', and vice versa. As ironic as it may sound, the final semanticization of the word 'waste' at the European level is coextensive with a spatialized waste-experience immanent in a materialized lawscape. Inside it, 'waste' as a legal category and 'waste' as a fact will be the interpenetrated components of a unitary socially signified situation. But this will have been the final result of a polyphonically multi-sited transactional/translational process between the law's words and facts, symbolic legal signs and the semiotic landscapes interplaying with them throughout the making of their signification.

Paolo Vargiu applies the Saussurean distinction between *langue* and *parole* to investment law and arbitration. In his work, Vargiu relies on semiotics to establish whether international investment law can be regarded as a multilateralised branch of international law, with a common language, customs and rules. First, Vargiu introduces the main concepts of investment arbitration as signifiers that aims at defining the signs the code of investment arbitration is made of. Then, he moves to define the 'signifieds' of investment arbitration in light of the *parole* of the mechanism - that is, the way the code is concretely used by arbitrators, lawyers and academics in the field. This construction allows Vargiu to question the conception of investment arbitration as a system based on a single, uniform and defined *langue* and a consistent *parole.* This innovative approach to investment and arbitration law is rich of implications. For instance, it enables Vargiu to steer away from a purely empirical engagement with investment and arbitration law leading one to arbitrarily identify the international law of foreign investment with what is contained in the international legal instruments regulating foreign investment and applied by investment arbitral tribunals. Such an identification would be theoretically and practically questionable, since it has the effect of jeopardising the unity of international investment law by thus dissolving it in a series of largely unrelated micro-systems of legal regulations. Equally important, Vargiu's semiotic approach enables us to fully realise that international investment law lays at the intersection of such different discipline law, economics, political science and linguistics.

Mario Ricca proposes an inversion of Latour's famous inversion of Austin's main work: 'How to Make Things with Words.' The argumentative path stems from both a non-representational interpretation of categorization and the identification of its enactive, proactive and teleological aspects as constitutive elements of their own structure. This dynamic understanding of categories allows the author to recognize in their semantic entropy a crucial feature of their meaning and use. From a semiotic perspec-

tive, this means that semiosis and the self-transformation of categorical frameworks are to be taken as processive aspects of what is objectified through the term 'category.' From this perspective, categories are epitomes of dynamic semiotic relationships that embody and condense in symbolic signposts the spatial unraveling of their projections. In this sense, categories and spaces as semiotic networks are continuous, and interplay horizontally. Just as categorization draws relational and reticular connections between the semiotic elements of phenomenal space, the interplay between different, and even physically distant spaces of experience produces the unweaving and reweaving of the relational threads within and across categorical frames and networks. When this self-transforming process—inherent in categorization and its genuine signification—is applied to law, and specifically to legal categories and their constitutive protension toward the future, the relationships between norms and facts, as well as their respective meanings, shows its inner bi-directional, interpenetrative dynamics. The essay analyzes the implications of the above intermingling between the symbolic dimension and space on the idea of the legal system as a self-referential semantic and pragmatic domain by reviewing the analytical-positivist, hermeneutical and pragmatist approaches to law.

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