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The Law's Rhizome: Tracing the Swings and Sprawls of Legal Evolution

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Undecidabilities and Law – The Coimbra Journal for Legal Studies (ULCJ)
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In a time highlighted by the quest for the Master Algorithm, several major juridically relevant societal problems resist significantly the predetermination of a unique solution and open a huge spectrum of perspectives and operatories. The title Undecidabilities suggests directly this resistance (as we know, in computation complexity theory, an undecidable problem is the one for which "it is proved to be impossible to construct an algorithm to a correct yes-or-no answer"!), whilst simultaneously considering the permanent renovation of the questions and the plurality of answers which those problems allow, which means considering the instability of cultural and linguistic contexts (justifying a permanent attention to differences, if not différances, as well as to authentic "clauses of nonclausure").

Each volume of our Journal will be dedicated to one of these societal problems and this context of resistance to unique languages and solutions, seriously taken in a reflective horizon that crosses dogmatic and meta-dogmatic legal discourses with the challenges of extra-legal perspectives and approaches.

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Editorial

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Law Without Roots: Mapping the Rhizomatic Turn in Legal Thought and Practice

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ABSTRACT
This special issue explores how legal systems evolve through dispersed, relational, and non-hierarchical processes. Drawing inspiration from Deleuze and Guattari's notion of the *rhizome* (1980), contributors examine the ways in which law swings between polarities – sovereignty and subversion, norm and rupture – and sprawls across geographies, disciplines, and ontologies. The papers assembled here challenge arborescent legal imaginaries, proposing instead a fluid and transversal understanding of law's formations, transplants, and transformations.

KEYWORDS
rhizome, legal pluralism, evolution, deterritorialization, network

1. From Arborescence to Multiplicity: Law's Conceptual Shift

This special issue grows from a shared intuition: that law is no longer best understood – or perhaps never truly was – as a coherent tree growing in a traditional fashion with deep roots and hierarchical branches. Instead, law sprawls. It swings. It shifts terrains, recomposes itself, and sends out shoots in unexpected directions. Like the majestic Banyan tree (*ficus benghalensis)* with aerial roots that distinctively extend from branches towards the earth remain above the cover of soil, the sprawl of law upends normative expectations. Drawing from the philosophy of Gilles Deleuze and Félix Guattari (1980), we take the rhizome as our guiding image, not only for how law is theorized but for how it lives, evolves, and multiplies. The representation of the rhizome is a figure, a shape, a mass that is without hierarchy, without presumption of expected direction. Through the rhizome, we trace the unpredictable swings of legal development – between center and margin, sovereignty and subversion, norm and exception – and the serendipitous elasticity that radiates across jurisdictions, disciplines, and epistemologies.

The rhizome, as Deleuze and Guattari (1980) imagined it, is a mode of thought that rejects origins, linearity, and hierarchy. Rhizomatic systems are a-centered, non-hierarchical, and composed of multiple, non-binary connections. Connections are multiple with a dimensionality that is sometimes fluid, sometimes abrupt. Applying this conceptualization of possibility to law, we envision legal evolution not as a single line of progress but as a field of proliferating paths – some connecting, some diverging, some looping back on themselves. It can be quite messy. This collection of essays maps those paths and interprets the messiness. It explores the labyrinthine legal moments that swing between rigid codification and radical plasticity, and how law is manifested across the daedal complexity of spaces that are legal, cultural, technological, and even planetary.

The foundational contribution in this issue interrogates the metaphysical and epistemological roots of legal thought itself. It critiques the dominance of the arborescent model – from Plato's diairesis to Chomsky's deep structure – and examines the metaphysical underpinnings of Actor-Network Theory as it grapples with artificial agency (Balsemão-Pires 2025). What emerges is a call to take seriously the law's own metaphysical swings: its shifts between determinacy and contingency, between control and chaos. Legal systems, this paper suggests, are not merely structured hierarchies, but networks in which machines, humans, norms, and semantics co-produce agency and accountability. These are not stable terrains; they swing, they morph, and they demand new conceptual tools. The machine and the machination of deterritorialized life results in a constructivist web of agency, dispersal, and judgement.

The question of territorial sprawl takes center stage in the figure of the pirate. Historically moving across seas beyond sovereign control, the pirate unsettles the very notion of territorial fixity. Pirate codes did not eliminate law but reconfigured it into alternative orders, sprawling beyond states, charting new forms of collective governance and resistance (Marneros 2025). This raises crucial questions: who frames this sprawl? Who benefits from it? And how might a rhizomatic understanding of piracy disrupt the narrative of inevitable legal colonization?

This theme is echoed in the study of the pirate as conceptual persona. The pirate is not just a figure of historical curiosity but a metaphor for the law's exterior, a form of nomadic resistance to the state's project of containment. Pirate codes were not lawless but operated through their own (non)

laws. They swung away from state legalities and established alternative orders, based on mutual aid and anti-sovereign logic (Marneros 2025). This swing toward radical alterity, and away from normative domination, reveals the law's capacity to be reimagined, uncaptured, unrooted, and in constant becoming. The pirate challenges understandings of value, transparency, and materiality even as it problematizes law, order, and hierarchy.

Law's affective and spiritual dimensions are foregrounded in the exploration of Aboriginal legal cosmologies. Here, the sprawl is not geographical but ontological. Law is not limited to written codes or sovereign enactments; it emerges in songlines, spirits, and cartographies of relation. The Australian case of *Munkara v Santos* becomes a site where the legal system swings between recognition and erasure, between responsiveness and blindness. Through a mycelial metaphor, the contribution insists on the law's sensorial potential and the importance of legal systems learning to speak in languages other than their own (Philippopoulos-Mihalopoulos 2025). Terrains of law, whether on land or underwater, reflect an emerging sense of fluidity that frames its inhabitants and its occupation.

The evolution of China's legal system offers a different kind of rhizomatic sprawl, one that is historical, philosophical, and pragmatic. As the legal system hybridizes Confucian ethics, socialist frameworks, and global capitalist pressures, it resists coherent classification. Its swings – from central planning to market liberalization, from authoritarian control to selective flexibility – demonstrate that legal modernity is not singular. Instead, the Chinese experience exemplifies a legal multiplicity grounded in the pragmatic sprawl of tradition, governance, and transformation (Łągiewska 2025). In such a system, power and control diffuse applications in tentacularity.

Legal transplants, too, are reimagined here as rhizomatic rather than linear. The migration of legal ideas across jurisdictions does not follow a clear chain of influence; instead, it unfolds as a feedback network, where concepts are reinterpreted, reappropriated, and re-situated. The concept of transplant itself swings – sometimes used to justify mimicry, sometimes to spur innovation – and sprawls across legal systems in unpredictable directions. The legal concept becomes a living node, transformed by the cultures and languages it encounters (Uliasz 2025). The resultant evolving language of law communicates complexity of entry and exit through channels that obfuscate the opaque.

2. Flows, Feedback, and Fragmentation: Reimagining Legal Terrain

Corporate regulation is another domain where rhizomatic sprawl meets juridical formalism. The contribution on Global Value Chains critiques the European Union's due diligence directives as simultaneously ambitious and deeply compromised. Legal frameworks here swing between soft and hard law, between metrics and meaning, between performance and performativity. The sprawl of data, indicators, and reporting requirements creates a diffuse network of responsibility, one that risks becoming cosmetic. Yet the rhizomatic reading resists cynicism by suggesting alternative ways of conceiving legal impact – less as a vertical imposition than as a co-produced ethical terrain (Tenreira, 2025).

In the healthcare domain, France's post-2021 digital transformation becomes a case study in legal sprawl driven by technological infrastructure. The Health Ségur initiative, with its emphasis on interoperability, patient platforms, and AI diagnostics, reshapes law not through new doctrines but through interface, protocol, and connectivity. Here, the legal swing is from analog to digital, from document to data stream, from control to flow. Healthcare law no longer merely regulates; it becomes part of the very codebase through which care is delivered. This shift is not smooth; it is fractured, uneven, and deeply rhizomatic (Wagner 2025) in its delivery, its rejection, and its inability to impart care.

Together, these contributions form a cartography of legal movement. They show how law swings between poles, between norm and exception, centrality and dispersion, capture and escape. They show how law sprawls across territories, technologies, and traditions, leaving behind the static image of codes and courts. They invite us to think of law not as a system of rules, but as a process of composition, negotiation, and rupture. Law is messy in ways that are experiences in everyday systems of living and negotiating institutions and standards that are never as traditionally vertical or horizontal as they might seem.

If the law is a rhizome, then legal scholarship must learn to trace its movements without demanding resolution. This special issue does not offer closure; it offers openings. Openings to other disciplines, other voices, other worlds. Openings that allow us to dwell in the uncertainty of legal

evolution – its sudden swings, its creeping sprawls, its quiet ruptures. In these movements, we may find not only critique but also possibility. Not a new law, but a law becoming something else.

On behalf of the Editors,

We extend our gratitude to the contributors for their theoretical courage, critical rigor, and imaginative reach. Their work not only provides valuable insights but also opens new pathways for the future of legal thought.

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Thematic core

Rhizome bundles, multiple agencies, and ascription – a critical appraisal of rhizomatic imagery

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ABSTRACT

Starting with a review of G. Deleuze's and F. Guattari's metaphysical and methodological assumptions in *Mille-Plateaux*, this paper aims to critically appraise Bruno Latour's rhizomatic Epistemology, particularly in agency and network formation, and its Leibnizian inspiration, as mediated by G. de Tarde and G. Deleuze. It also seeks to evaluate the soundness of some of ANT's metaphysical assumptions, such as the metaphysical primacy of forces and forces irreducibility, in light of the increasing participation of artificial agents in communication and social interaction and the growing technological transformation of the 'natural attitude.' The meaning of artificial agency is the empirical perspective through which I will evaluate ANT's epistemological and metaphysical claims. The paper will define artificial agents and artificial agency and describe the social context of the 'pool of agents' that includes humans and machines in digital networks of human-machine interactions.
The normative themes of causality, accountability, and responsibility of artificial agents, central to the Ethics of artificial intelligence, will also be explored within the critical appraisal of ANT's description of networks.

KEYWORDS

Rhizome, Deleuze, Guattari, AI, ANT, Bruno Latour, networks, artificial agency

1. Imagining the Underground – Self-division of the One or Rhizomatic Proliferation

Mille-Plateaux is a haunted book that can be read as an exorcise guide to keep off its ghost.

The specter is Plato acting through the witchcraft of the *Sophist*, the parricide dialog, and the founder of Logic as Metaphysics. From the *Sophist*, Western Philosophy received dialectics as the method of thinking according to the Ideas' objective distribution and connection, divided into *diairesis* and *synagogé*. The dichotomic method provided a clarifying description, in degrees, of "what is" and a tool for a political royal ruling

by giving faultless accounts of the classes of entities considered subordinated in the face of others that should have supremacy.

In *Mille-Plateaux,* Gilles Deleuze and Félix Guattari developed a new approach to the metaphysics of knowledge. They proposed a new, powerful image of the metaphysical support of knowledge organization using the contrasting metaphor of the rhizome and rhizomatic anarchic proliferation. A rhizome is not a tree and does not obey an ordered ramification from a central root or bough. In the history of science's classification, the image of the tree whose growth spreads from a central pillar has had such a formidable impact that it became a commonplace, the standard image of the nature of science's organization. Science's branching across the tree of knowledge continued the dialectical division of the One. What would then justify a revolution in the metaphysical imagination of science's branching?

The answer is easy to give but hard to substantiate: the need for a metaphysical vindication of the rights of diversity contrasting with the multi-secular prestige of the One and the Platonic dichotomic methods of the *diairesis* and *synagogé* as self-division movements of the Idea. Along *Mille-Plateaux,* there is no other explanation for the change of the metaphysical imagery.

Unlike G. Deleuze's *Différence et Répétition* (Deleuze, 1968), in the 1980 work, G. Deleuze and F. Guattari did not endeavor to work in the History of Philosophy or any other meta-theory of the History of Philosophy. They offered a book with new metaphysical, vegetal, earthy, underground, non-hierarchical images that would be advantageous in pursuing the vindication of the rights of diversity, contingency, and occasionalism with new terminology that frequently assumed a baroque variety and detail. Their views are not reducible to new diagrams of "knowledge representation" since they focused on the metaphysical depth of the earthy, vegetal resonances of the rhizome imagery. Interpreting their method in that book, I would summarize their mosaic of problems into the question of what makes and keeps diversity and non-planned variation in systems.

The absence of an operative constructivist approach to this central question marks their metaphysical style, described as a view of the earth's dynamics before "God's judgments." (Deleuze and Guattari, 1980, pp. 70-71 and p. 76).

Both authors delve into a rich literature that spans from Literary sources to Linguistics and Semiotics, Psychoanalysis, Biology, Anthropology, and classical Philosophy to rescue the images and descriptions appropriate to vindicate the rights of the multiple, contingency, and non-hierarchical

meaning formations. The imagery of a living Earth as the setting of a proliferation of entities and relations self-organizing outside the One, an economy without hierarchy, where territory displacements, deterritorialization, and reterritorializations take place, is a means to achieve the representation of the ideal of perfect communication, a non-delimitation of entities, absolute deterritorialization or the "body without organs."

They tell the metaphysical story of the shaping of separate entities as a stratification genesis from the point of absolute indifference. A diagram of the stratification process goes from geological strata to the formation of crystals, physicochemical, and organic strata (Deleuze, Guattari, p. 75). The internal relations between the different entities of the distinct strata look like mechanical, organic, and expressive linkages, where each level prepares the others as molecular sources merge to form a molar structure, as virtual potentialities convert into actual configurations. The final organization obtained from the molecular and molar levels relations is equivalent to the "judgments of God" (Deleuze and Guattari, 1980, p. 76).

At the molar organization level, as in complete functional organisms, higher structures responsible for referencing and transforming environments emerge, such as technical manipulation, which explains deterritorialization phenomena and the detachment of units from the homogenous continuum.

The rhizomatic proliferation across deterritorialization and reterritorialization events belongs to a metaphysical series and refers to metaphysical events. Even when the authors seem close to real processes, it is impossible to follow the empirical expressions of such a superb history of systems.

One of the underlying purposes of their metaphysical geo-genesis is to critique Noam Chomsky's Linguistics and its theory of meaning.

Across his work, N. Chomsky's avoidance of contextual and pragmatic explanations of meaning formation and the proximity to the platonic *diairesis* and cartesian innate ideas assist as the epitome of the philosophical model that better embodied the tree metaphor and the hierarchic view of knowledge and language contested by the new rhizomatic view.

Rhizomes are images of meaning formation contrasting with N. Chomsky's platonic-cartesian Linguistics since the rhizome conveys a contingent, fuzzy, occasionalist, and inferential perspective of the local-global relations and association nodes in meaning formation that cannot avoid the uses and pragmatic contexts better expressed through the image of the network. The concept of context in Pragmatics refers to an extensive series of

associative nodes belonging to meaning and action constellations prolonged in inferential semantical chains used in the definition of words or concepts that are not outcomes of phonological-syntactical-semantical innate articulations reconstructed in the syntactic-semantic trees of the deep grammar. Equipped to include the large field of language connectivity and contextual meaning configurations and focused on performative linguistic actions (speech-acts), entailing theoretical consequences not reducible to the philosophy of language, pragmatics is the label of a theoretical global shift confronting the nativistic linguistic tradition.

Agencement, a French word that is challenging to render in English, which I translate as layout, represents the global structure that includes political and social contexts of the language uses that cause the emergence, stabilization, and change of meanings. The focus on language use explains why contexts, purposes, and inferences that contingently surface and disappear are crucial in contesting the platonic, cartesian views persistent in Chomskian Linguistics. The allure of referring to contexts and practical uses in characterizing meanings is not only a consequence of G. Deleuze's proximity to C. S. Peirce's Semiotics (see: Deleuze, 1983, 1985) as an alternative sign theory but an opportunity to disavow the hierarchical flavor of Chomsky's appropriation of *diairesis* or Louis Hjelmslev's Glossematic dualism of the signified and signifier, content and expression.

Mille-Plateaux's metaphysics favored the metaphysical story of hybrids, mixtures, parasites, viruses, and sponges that feed themselves from extensive connective grids, forming contingent layouts, instead of the story of the hierarchical disposition of encapsulated, clear, and distinct ideas.

They did not suspect other alternatives to the dialectical procession from the One and the hierarchical disposition of meaning elements beyond the contingent, occasionalist hybridization of meaning formations. The invention of the hybrids is the price they paid to avoid hierarchy.

Contesting the heritage of the platonic *diairesis*, G. Deleuze and F. Guattari's metaphysical invention of the rhizome resorts to networks and non-linear connectivity as if the new entities to follow were the hybrids at the crossroads of non-planned interactions.

However, networks and connectivity are expressions of highly articulated grids of operations and selections across systems and sub-systems, some of them autonomous and other symbiotic structures that explain why meanings produced in languages also correspond to performative mechanisms.

Jean Piaget's operative constructivism would have helped contest N. Chomsky's nativism and make the gulf from the metaphysical to the empirical crossable. Still, he played no palpable role in the new metaphysic plot.

Calling the global structure *agencement* and defining its emergence as a rhizome by contrast with the tree metaphor is helpful as an image. However, images are not yet concepts.

Performing linguistic utterances can be approached as a pile of many first-order imageries or pre-scientific descriptions. One could proceed similarly in law by viewing legal pluralism in comparative or international law as a pile of many normative sources not reducible to one sovereign source. However, this only poorly accounts for the concrete mechanisms underlying normative import-export flows or cross-feedings across differentiated legal systems. When the authors of *Mille-Plateaux* claim that language as an "abstract machine" is never "pure" language, they are undoubtedly correct, not because one has followed the hints entailed in the metaphor of a particular vegetal root but due to the concrete connective grids of operations that pertain to a single utterance.

The hyper-linear system (Deleuze and Guattari's 1980, p. 121 – "système surlinéaire"), identified with the rhizome, a pile-like, inter-strata layout, and extensive connections across different territories, is not a bad image. The trouble is that it is precisely an image.

As mentioned, some *Mille-Plateaux* theses and systems theory conspire against traditional hierarchical thought. Nonetheless, there are also significant differences. According to systems theory, concepts are not suggestive tools like metaphysical images.

Concepts have other functions in shaping distinctions and describing selection patterns occurring from operations. Take the example of the other impactful image of the "virtual cosmic continuum" ("continuum cosmique virtuel" Deleuze, Guattari, 1980, p. 121) as the inner vocation of rhizomatic communication. It does not describe; it does not establish any distinction. The purpose is to give a total view of a manifold and its occasionalist dynamics. Envisioning such a continuum would correspond to a universal fusion, genuine immanence in the body of the earth, and the absolute limit of hybridizations incompatible with the notion of forms, distinctions, selections, and systems.

The universal fusion explains why the "body without organs", the perfect participation in all, is not a concept but an image. Images are helpful in

first-order observations, literature, myths, metaphysical world views, action ruling, and control or in creating a "seeing as" effect to guide perception. However, with images, one cannot access the functioning of operations or the distinctions and selections they materialize, even if their contrasting rhetorical power is undeniable.

Evoking the importance of gathering all the contextual variables to understand linguistic meanings or the use of a norm in a system of norms, comparing language with music or with "pure time", "pure" continuity of all with all, the "virtual cosmic continuum" loses any potential in converting an image in concepts. If, by paradox, the continuum turns out to be a concept, it stands for the dissolution of any conceptual activity. Thus, they seem not to hesitate to risk the rhizome as a form to save the rhizome as an image of the total immanence of the continuum. However, as they also acknowledged, the rhizome does not have the same meaning in the two uses.

The authors' accounts of linguistic variation entail remarks on linguistic minorities and transformation as an effect of minoritarian influence in linguistic patterns. Language evolution would consist of a series of torsions in linguistic elements that introduce minority patterns into standard uses until the deformations convert into mainstream tendencies. For example, musical variations applied to a central musical recurrent theme produce deterritorialization and reterritorialization effects in sound sequences.

The field where the standard and the minoritarian patterns meet is a field of forces and torsions responsible for deviations in the long duration if minorities ensure sufficient cohesion across a series of deformations in the nodes of their horizontal connections that impact the standard uses, even if they don't have enough force to become legislators – torsions, deterritorializations are not insurgencies to get a global control.

The musical metaphor and the dynamics of de-(re)territorialization aim to show how continuity is interrupted according to defined layouts (*agencements*), which are synthetic productions of power relations, meaning interpretations, social formations, and agency. From the previous continuity, another kind of continuum emerges.

Quoting Michel Foucault, the authors regarded the systems of signs (*régimes de signes*), including the message, the subject of enunciation, syntactical structures, and semantic-pragmatic presuppositions, as functions of language production embedded in social situations where power relations also occur. The subject of enunciation emerges from this enunciation layout

as a process they call subjectivization (Deleuze and Guattari, 1980, p. 162). The point of subjectivization is an exterior position, a "thou", from which one receives the capacity and entitlement to become a subject (Deleuze and Guattari, 1980, p. 163).

The point of subjectivization is a compound of diverse factors, a manifold that triggers agency, knowledge formations, or discourse where there is nothing but the empty name of the subject in becoming an addresser.

An impressive account of war, violence, nomadism, and political sovereignty crosses essential pages of chapter 12 of *Mille-Plateaux*. Here, the central images have evident socio-political and legal connotations.

Defining war and understanding whether violence is a primitive notion are complex endeavors that require premises from prehistory, archeology, and anthropology and what one can get from political theories. The authors' central purpose is not an academic presentation of that definition but a demarcation towards traditional views, relying mainly on Georges Dumézil and Pierre Clastres's works on Indo-European institutions and primitive social organizations, respectively.

From G. Dumézil, the central ideas to remind are the distinction between the three classes of the Indo-European archaic social institutions, the priestly class, the warriors, and the producers, and the clear differentiation of the warriors from a previous, politically defined, central sovereign power.

From P. Clastres's ideas on the forms of primitive political governance, G. Deleuze and F. Guattari retained the thesis, stating that war is a means to prevent the formation of the state instead of being (initially) a tool of political ruling and domination.

These are the mutually consistent sources from whom *Mille-Plateaux* inferred a series of images. One of them, the pivotal, is the image of "the war machine."

Philosophy of History is here unavoidable, and it is again from an imagistic reconstruction of the past that they concluded the close connection of the war machine with nomadic primitive groups, Gengis Kahn and not the actual migrants, designing at the earth's surface the same loose constellations formed from rhizomatic growths and opportunistic connectivity in the underground. In contrast, systematically confused with the nation-state as a modern idea, the *Polis* epitomizes the consolidated, reterritorialized space, obeying the principle of gravity, a solid, secluded, and delimited grid of enveloped places, hierarchically organized.

Excluding a political genesis and the hunting genealogy, war and the war machine are independent genera, though permeable to political appropriation. Correcting P. Clastres, who allegedly completely secluded the war machine from the centralized power of the state, what is now essential are the episodes of appropriation of the warriors' violence that contributed to the consolidation of political sovereignty and the transformation of the lawless violence of primitive communities. The dynamic approach again focuses on forming hybrids, such as the War-State hybrid, following appropriations and parasitical combinations of diverse types.

Mille-Plateaux resorts to a Philosophy of History inspired by G. Dumézil's partition of archaic Indo-European political ruling in the characters of the emperor, the king-legislator-priest and the warrior related to the three types of violence of the lawgiver, magic and sorcery, and the war machine. In such a genealogy of authority and sovereignty, the war machine kept a relative distance from the other types of violence, particularly from the lawlike administrative mechanisms invented by the king as a lawgiver.

By mapping the configurations across this long duration, *Mille-Plateaux* reclaimed a more extensive reconstruction that would explain the political appropriation of the war machine as a territorial move of de-(re)territorialization, as a passage from the interior to the exterior, from the center to the periphery as a political means to achieve violence's enclosure in the territory.

Three autonomous forms merge in this story of displacements and enclosures across the territory and indeed as territorial events, from tribes to states and empires – the war machine, political sovereignty, and law. Hence, a new character comes to the foreground – the gangs (Deleuze and Guattari, 1980, pp. 445-6 – "les bandes").

The first thing to note is that gangs have a structure completely different from that of states. A trait that differentiates gangs from states is the presence of the war machine in its primitive form in the former type (ISIS is a contemporary regurgitation) and its relation to the territory and population displacements. The gangs are associations of people not exclusive of militia or para-military organizations – churches or commercial businesses may have gang-like structures and similar procedures. The war machine is among them not only as a set of mechanisms made to oppose movements to other movements, as entailed in the mechanical sense of "machine", but owes its whole meaning to a form of knowledge consisting of problem-

solving from problem-projecting. In dealing with exteriority, nomadic thinking is similar in procedure.

One outlines two kinds of science. One is the royal science, "platonic", *more geometrico demonstrata,* going from axioms and theorems to conclusions or general rules to cases. The other is problem-based, problem-solving science, nomadic, gradually emerging from experience, exemplified in Archimedes' hypothetical-deductive or abductive-mechanical knowledge. The difference between the two sciences, the royal arts and techniques and the nomadic problem-solving, also applies to contrasting metaphysical pairs of opposites, such as solids and fluids, rhythms with measures, and non-measurable rhythms.

Gangs are liminal associations that navigate through the pores of institutions, smuggling various tools from the two types of sciences.

The thesis according to which the nomadic sciences have traits that can never become fully integrated into the royal sciences is difficult to sustain (see the explicit statement of their independence in Deleuze and Guattari, 1980, p. 462) without detailing the set of operations performed on their typical layouts. Due to their assimilation of the same dichotomic thinking they have criticized, the royal science and the state are models of thinking one could abandon to enter a new sort of nomadic displacement (Deleuze and Guattari, 1980, p. 464). One may wonder whether royal, sedentary, tree-like science cannot assimilate the nomadic layout or whether, more radically, the territorial imagination is sufficient to depict modern society, the political system, and the law.

Recognizing the rights of nomadic science regarding the royal disciplines in coping with complexity explains the call for a new "thought of the outside" (*une pensée du dehors*) that would perform like the war machine as a tribal layout instead of resorting to an exclusive nation-state centralized source of norms. Yet, conceptually, this is much more difficult to determine than to imagine. By recognizing the extensive and movable contexts of the semantics of law, one has only identified the field of the complex problems related to defining political ascription and legal jurisdiction.

There can indeed be sources of law that do not rely on the nation-state as the first addresser. However, can one say that such sources belong to noninterpretable meanings according to the grammar of the political and legal sovereignty of a political system?

2. From Rhizomes to ANT's Holobionts

Approaching B. Latour's last writings, one can draw a remarkable parallel to *Mille-Plateaux*, regarding a new mythology of the earth.

In the aftermath of the COVID-19 pandemic, B. Latour wrote a book, *Où suis-je? Leçons du confinement à l'usage des terrestres*, described by himself as a "philosophical novel" (*un conte philosophique*, see Latour, 2021, p. 98), where he vindicated the "Nomos of the Earth" as an original kind of law, not avoiding quoting his source – Carl Schmitt and his homonymous work.

As is well-acknowledged, the concepts of forces, actors in the broader sense, which includes non-human sources of the agency, actors' strategical negotiations, actors' networks, translation mechanisms between forces, "creodes" and black boxes play a decisive role in the formation of ANT as a meta-theoretical project in philosophy of science and the social sciences. A good illustration of the shared principles of the research team around B. Latour is Michel Callon and B. Latour's 1981 essay "Le grand Léviathan s' apprivoise-t-il?" – an essay on the formation of political representation, to introduce the notion of translation, inspired by Thomas Hobbes's concepts of actor, author, and authorization (Latour, 2006, pp. 11-32).

For a moment, let's turn to *Où sui-je?* Here, we find ourselves on the same Earth as B. Latour and G. Deleuze-F. Guattari, who called it a place of flows, mixtures, configurations of different temporal strata, and displacements – a metaphysical-mythological land.

In the context of the pandemic, B. Latour added James Lovelock and Lee Marguli's *Gaia hypothesis* to this fund to introduce the composite, perplexing figure of the Holobiont.

A holobiont is any living creature with a central system and peripheral functions operating as a host of symbiotic or parasitic organisms that assemble a network of mutually dependent performances with the larger organism. The internal circuits of such an assemblage are networks representing micro-ecologies.

The holobiont reminds us of a symbiotic continuum, using the earth as a connective substratum. Like the virus in the pandemic, it encouraged a crisis in conventional views of territories or national borders, which have helped characterize the frames, and especially the limits, of the state's legal jurisdiction.

A definition of the holobiont's identity would face the paradox of containing a constellation of mutually dependent, communicating elements in the notion of an essence already transgressed by the flow of the interconnected parts. Moreover, one of the common characteristics of holobiont organizations is their superpositions (Latour, 2021, p. 87), configuring strata of interdependent organisms sustained across the nodes of their connective tissue.

The need for a new local-global approach (the network image) after the pandemic explains a new valuation of the distinction between the place where I live as a citizen, a delimited location under a well-defined legal jurisdiction, and the vast regions on which I depend to live, which has become a large field of extraction and exploitation, with which I have indeterminate ties, that may become infectious places, not obeying the same regulations. B. Latour did not employ the notions of deterritorialization or reterritorialization typical of *Mille-Plateaux*. Still, recognizing these flows as unruled transactions between two worlds, he thought of a similar transgressive, non-planned local and global dynamic: *Les droits du premier monde ne s'* étendent *pas dans le second* (Latour, 2021, p. 86).

The holobiont is a splendid imagistic resource for B. Latour's purposes, offering an example of his networks and actors.

It is a reminder of three crucial claims in his work since the essay on T. Hobbes, the book on Pasteur and *Irréductions: i*) that a description of agency cannot avoid integrating humans, other complex animals, micro-organisms, artifacts, and social institutions, intentional and non-intentional agents; *ii*) that the relations between actors are evolving, contingent configurations made of forces distributed in networks; *iii*) the actors enter in alliances and confrontations, maintaining asymmetric, power relations among them due to translation mechanisms responsible for reproducing hegemonic positions, modifying contingent links in "creodes" and black-boxes.

3. ANT at work in a Law Laboratory – the French State Council

B. Latour's application of ethnomethodology to science dates from his 1979 collaborative book with Steve Woolgar *Laboratory Life*. It was the first

successful endeavor in the philosophy of science to use ethnological observation and description tools in approaching the strategies of scientific actors in the production and written dissemination of scientific outputs.

The second essay on applied ethnomethodology examined the central institution of the French administrative law system, the Napoleonic *Conseil d' État*, first published in 2002 as *La Fabrique du Droit* (translated into English in 2010, which I follow).

The book offers a general approach to current themes of the philosophy of law, especially a criticism of legal formalism, a sociological analysis of bureaucracy, a detailed ethnomethodological guide to the French *Conseil d' État* procedures, and an illustration of ANT's theoretical assumptions.

Regarding the interpretation of the law and the hermeneutical nexuses between the abstract statements of the legal rules and the singular cases, B. Latour continues the well-known postpositivist and post-kelsenian theses that have rejected the image of the quasi-automatic logical subsumption of the instances under general imperative rules. Still, he added ethnological observation to the well-known conclusions of the criticism of formalism, showing that the Ethnologist's assessment of the law practices in the French State Council cannot confirm the formalist description of the law application.

Law application isn't an "automatic reflex" (Latour, 2010, p. 160) that applies abstract rules to cases. He believed faithfully engaging with vivid examples should culminate in anti-formalist conclusions. If deductive inference doesn't suit legal interpretation, a broader understanding of the legal text must address these limits.

Although the treatment and critique of law focuses more on sociological and institutional aspects rather than purely logical argumentation, the author seeks to integrate dimensions such as types of arguments, legal procedures for lawsuits, written legal codes, the use of "Recueil Lebon" for Council decisions, the law's written and oral memory, actors' roles based on Council categories, and interests' weighting according to their power and representation. These dimensions do not always align with a deductive, argumentative structure. So, concludes the philosopher, they must be *forced* to align with reasons corresponding to the juridical decision's argumentation, rejoining the claimants' precise demands in lawsuits. This *forced* alignment of various dimensions in making a juridical decision on administrative law in the *Conseil d' État* explains using textuality as a weaving of many sources,

not a fixed textual *corpus*. Texts, agents, interests, forces, and resistances are conceptual tools that converge to clarify what the Philosopher-Ethnologist considers the intertextuality of administrative law at the State Council (Latour, 2010, p. 184). The continuous reference to forces distinguishes the ethnomethodological approach to the law from the Hermeneutics of legal texts. This one is mainly concerned with the techniques and practices of correlating written legal texts, actions, and the world of the texts through understanding and interpretation.

Across the Ethnologist's annotations, irony is a constant revealing that the State Council actors' public conceptions about administrative law and their function as guardians of the Constitution and custodians of legal security, juridical continuity, and predictability are surface phenomena of tensions of forces that occur on larger contexts resorting to another bundle of actors weaving their networks and texts.

Thus, force and text, as the two main categories of the ethnomethodological view of law, are put in a dynamic correlation that explains the legal actors' hesitations, lengthy deliberations, and the pluralism of legal opinions revealed through the records of the system's memory. In defined networks, such as administrative law, forces, and texts capture the contingent nodes—the singular lawsuit cases—to produce inflections of the network, as in the case of decisions that may promote a new correlation of forces even when covering the underlying conflicts.

Referring to the politically delicate cases the State Council must address, the Ethnologist discusses the example of a decision on how to apply a prohibitive norm of the French Penal Code (art. 432-13) regarding conflict of interest to the nomination of a public servant ceasing his functions in public administration to an essential private bank, appointed by the President of the Republic (Latour, 2010, pp. 160 ff.).

The arguments' weights do not go to the rules, subsumption, or analogical discovery of cases' similitudes in jurisprudence texts and precedents alone but to the nature of the claims produced in the lawsuit and the predictive gains and losses estimated for the stability, predictability, and safety of the system from the outcomes of a decision favorable or not to the groups of interests to be pondered.

The parties' claims in the lawsuit triggered a movement known as the "passage of the law" (Latour, 2010, 160). This passage means organizing the legal dimensions associated with the case to prepare the legal discussion

leading to the final decision, which becomes a valid legal obligation for the parties involved.

In France, the transference of public servants to the private sector was common, notwithstanding the rules of art. 432-13 of the Penal Code explicitly prohibited this situation. *Contra legem* practices prove that the law is not always the sort of sociological obedience people usually attach to it. This apparent paradox motivates assessing what makes a legal obligation an actual obligation, where it begins, and where it ends.

Let's start by stating that the obligation presumed in law is a "mixture." What makes an imperative statement law is the mixture that has translated its sources from non-legal elements to a complete legal rule and from this to new instances through textual *unpure* understanding, forming law as an actual image of a holobiont.

How can this happen? The author reminds us that he is aware of the circularity of law – to define any law statement, one must presuppose the law. It seems impossible to leave the circle of self-presupposition in the law system. This self-presupposition is why the law system is one of the best examples of a self-referential system. Self-reference could be a complex problem for the Ethnologist, who confesses his embarrassment when inferring theoretical conclusions from his field notes facing the problem of self-referentiality.

According to the Ethnologist's notes, the formation of a lawsuit through litigation is evidence of the mixture – systemic elements on one side and "exterior" elements on the other, a territorialization flow, and a deterritorialization counterflow or what, in a condensed formula, he calls "mixture of climate and law." In the aspects of the counterflow, one would mention the self-endowed discretionary power of the President of the Republic when recommending the civil servant for the bank position as a non-legal *voluntas*. Yet, a non-legal *voluntas* is what it is – it has no existence in the law system as a source of legal obligations; it is lawless and powerless in the same sense. Moreover, from the lawless-powerless exteriority of *voluntas,* nothing legal follows. This strict self-referential cycle should prove an interruption in the flows, not their continuity.

The recorded discussions of the counselors of the State Council evolve across many themes that do not necessarily have any legal content. From this first-order observation, the Ethnologist concludes that legal reasoning and legal procedures, legal obligations, and decisions are "mixtures" that emerge

not only from the cognitive alertness of the law system but from its constitutive reliance on relations of forces inside and outside the courts, across the procedures, during the deliberation and litigation.

This expected conclusion on the metaphysics of forces develops theses of *Irréductions*. Its direct application to law is very disputable. That the Ethnologist is aware of this is easy to conclude from his remarkable ability to quote the counselors' argumentation in conjunction with his comments on the relations of forces underlying the bureaucratic hierarchy of the State Council. Ironically, he states that "it is essential for the quality of law that there is nothing but law in law" (Latour, 2010, p. 166.) Despite the irony of the affirmation in the middle of the argumentation on recognizing the extra-legal themes in legal deliberation, the phrase is a rigorous description of law as an autonomous functional system.

Through the lenses of a first-person view, the Ethnologist missed the point. The point is not the admission of *extra-legal* contents in deliberations on lawsuits across the juridical conversations of counselors and legal experts leading to legal outcomes but recognizing that legal procedures about lawsuit instances' entries and exits determine what must or must not be addressed with legal means in (legal) cases. That this entails a virtuous circularity is not arguable. What should be evident from a second-order observation, and it is not available from the first-person notes of the Ethnologist, is that it is due to this self-referential presupposition that legal communication is possible.

Because of the law's circle, nothing exterior to the law *forces* the law to become law or the State Council to endorse this and not that decision. Unlike Ethnologist's statements, the system's closure is not a phenomenon concealing a deeper essence made of (extra-legal) forces and power.

By introducing a State Council character, the chronicler B. Latour addresses the central themes of law's time and memory, but again, only to emphasize his primary theoretical generalization: that the law in court decisions, chronicles, and other archives is a special kind of bundle, aggregation, or grouping of an assortment that generates or maintains a particular direction in a field of forces.

Regarding metaphysical images, we have seen what G. Deleuze and F. Guattari made with their heterogeneous underground bundles, the rhizomes. With B. Latour, the image of the bundle remains, stressing the local tensions producing aggregation of energy, matter, and actors with

agency involvement and meaning production. The Ethnologist is interested in the formation processes of constellations of actors and materials they can assemble to pursue their goals coming into existence due to extraordinary "coups de force" also in the "saying of the law" as a performative speech-act. Some outcomes of these generations are extensive hybrids or colonized organisms like the holobionts.

Like *Mille-Plateaux's* rescue of the performative dimension of discourses, the Ethnologist at the law lab also stressed the highly ritualized *milieu* of the felicitous conditions of the saying of the law, where the sequences of the legal actors' deeds should pertain to a set of diagrammed rules. Thus, it ensures combining a hierarchic style with a networked layout of social interests with the respective forces.

One hybrid within the State Council involved in producing legal norms is the judge-legislator. B. Latour criticizes formalist legal theories and examines judges as producers of legislation. He discusses the State Council's role in clarifying interpretative options and choosing solutions to achieve normative coherence. Using a geological analogy, he argues that jurisprudence requires filling omissions, removing semantic imprecision, and aligning precedents with new interpretations, similar to crushing organic life into the earth (Latour, 2010, p. 183).

Administrative jurisprudence in "Recueil Lebon" illustrates the judge-legislator's role in addressing the system's weaknesses through hermeneutic methods and analogy. The concept of "the will of a body of judges" (Latour, 2010, p. 189) and their recorded opinions reveal a gradual law evolution through minor adaptations, contrasting with revolutionary changes in legal history.

More agents attending or looking for the State Council's decisions join this hybrid figure, such as claimants, lawyers, reporters, revisers, commissioners, chroniclers, and academia experts (Latour, 2010, p. 192). They form the human actors to which other material substances adhere, such as documents and files in classified archives, the AN in ANT.

What ensures these actors belong to law is the translation they fulfill of a set of ten "value objects", carefully diagramed (Latour, 2010, pp. 194--195): the authority of the agents, the progress of the claim, the organization of the cases, the relative interest of the cases, the weight of the texts, the quality control of law's felicitous conditions, hesitation and freedom to ponder, means and arguments mobilized, the coherence of the law system, the limits of law as entry and exit rules in lawsuits.

Translation is a fundamental notion in ANT's vocabulary. It means creating layouts of networked actors that define each actor according to a particular relation of forces. The dominance among these relations and participants conveys the interests of the actors who achieve victory in consolidating and reproducing the network and its assembled objects.

The State Council exemplifies a batch of translations from its actors' connections regarding the ten value objects.

Since the networks evolve and mobilize very heterogeneous materials corresponding to the material multiplicities of the lawsuits, the notions of plasticity and heterogeneous multiplicities are appropriate to stress such moving ground and the slippery of the objects and actors.

> (…) this material has a very particular plasticity because each agent modifies the form taken by arguments, the salience of texts, and traces on this ectoplasm of the administrative law a set of divergent paths, mobilizing clans who confront each other with facts, precedents, understandings, opportunities or public morality, all of which are used to stoke the fire of the debate. And when this process comes to an end, it is never because pure law has triumphed, but because of the internal properties of these relations of force or these conflicts between heterogeneous multiplicities. (Latour, 2010, p. 192)

This passage is significant. I'll divide the quotation into two parts and draw a few criticisms.

1. The author claims that law is grounded in a field and through connections that do not belong to pure law. This thesis represents his anti-formalist creed. However, the Ethnologist infers from the need to banish logical formalism more than this banishment alone allows. The implicit rejection of logical formalism justifies the creed. However, logical formalism in law has been rejected in various ways that do not necessarily lead to affirming forces as the springs of law. As I emphasized, invoking forces and the "internal properties" of the relation of forces cannot exclude the self-reference of law, which is neither an outcome of logical formalism nor a "force" and represents a symbolic condition of law's reproduction. Still, the law's self-reference remains under Latour's attack. The "internal properties" of forces is an ill-defined notion, particularly if one applies the non-reductionism of *Irréductions* to forces.

2. Law as an ectoplasm arising from translation is undoubtedly a very impactful image. An ectoplasm is a viscous excretion where materials of heterogeneous proveniences are assembled but in such a manner that it is difficult to establish the limits of the original forms. The ectoplasmic figures are medium-transfigured phantasmagoria aggregated by the density of the viscous substance that is neither real nor purely imaginary. In its suggestive power, the image may be evocative of the impression caused by the "saying of the law" in an onlooker. Nonetheless, it is unable to explain how the engine of law operates. The difference between an image and a concept relies on the suggestive function of the first and the explanation power of the second.

4. Artificial intelligent agents and ascription in a population of plural agency

The description of the French State Council is perfect for providing an example of the attempt to combine empirical research and the use of images in generalizations of the metaphysics of forces typical of ANT. However, as concluded in 1 and 2, these do not always lead to coherent outcomes.

As introduced by B. Latour, himself, Michel Callon, John Law, Madeleine Akrich (Akrich, Callon, and Latour, 2006), or in Graham Harman's neo-Heideggerian version (Harman, 2009, 2011) ANT's concept of actor represents an essay to emphasize some non-trivial properties of agents and agency, such as the relational character of agency (*i*), its networked assemblage resulting from force and relation of forces (*ii*), the inclusion in the "actor" category of non-human agents, such as animals or micro-organisms, material objects and artifacts (*iii*), the bunch resulting from actors' aggregations (*iv*) the actors' subjection to translation mechanisms that explain the difference between micro- and macro-actors (*v*).

Beyond many stylistic similarities with the rhizome and the use of the metaphors of the soil and earth, ANT and the rhizome are decentralized, non-formalists, reject the processive dichotomic path from the One, and are occasionalists (see Graham Harman's reading of ANT in Harman, 2011). They also shape new views on local-global connectivity that may be attractive for various disciplines.

Outside the French State Council law laboratory, as we approach the conceptual demands of situations where multiple agents act, accountability and unequivocally identifying the accountable agents from the sequential layouts of causation become proof tests of some of the ANT's claims using images of bundles.

At the crossroads of *quaestio facti*, *quaestio juris*, and moral judgments, ascriptive judgments and assignments are among the primary functions of legal systems and reasoning. They entail discrimination of action courses, an unequivocal definition of causal sources of events from the "facts", categorization of agents, and a gradation of the levels of agents' responsibility according to the law's determinations and moral accountability.

The recent dissemination of digital platforms in digital networks using artificial intelligence software expanded the daily life presence of expert systems in extracting information and generating new forms of cognitive expression, communication, and decision-making. AI experts stated that the future of these technologies will be in the creation of intelligent agents with enlarged cognitive and communicative capacities. The outlook seems like a giant ANT creature made of many holobiont structures and connections. However, this impression is again the outcome of taking the image for the concept; it is an imagistic suggestion. Like all images, it projects ways of looking at things. Still, it is poor in enlightening how things work. Determining accountability in an agency involving artificial agents is impossible with images as descriptive tools.

One should address ascriptive determination under an analytical orientation in adopting the values of AI ethics, such as "do not harm" and human rights, inclusiveness, flourishing, autonomy, explainability, transparency, awareness and literacy, responsibility, accountability, democracy, good governance, sustainability, safety and security, gender equality, age non-discrimination and age awareness, privacy, solidarity principle, the value of justice, holistic approach, trust, freedom, dignity, remediation, addressing bias, ethics in engineering education, enshrined in legal documents of international organizations (UNESCO) and the European Union.

Central tasks in scrutinizing ascription include discriminating between courses and sources of action and separating overlapped sequences from different sources. Such discrimination work is particularly decisive in networks and networked action sequences with multiple agents, independently of the recognition of the capitalizing effect of the global network over its

isolated elements. These tasks are causal, ethical, and juridical endeavors to identify accountability categories for the described action courses.

On October 22, 2024, two societies of attorneys representing Megan Garcia, mother of Sewell Setzer III, a suicidal 14-year-old boy, filed a lawsuit in a civil action against the AI Company "Character Technologies Inc." ("Character.AI"), its owners and founders Noam Shazeer and Daniel de Frietas Adiwarsana, "Google LLC" and "Alphabet Inc." in a Florida court (US District Court, Florida, Orlando, case 6:24-cv-01903).

Their complaint was about "wrongful death and survivorship, negligence, filial loss of consortium, violations of Florida's Deceptive and Unfair Trade Practices Act", also demanding injunctive relief. Widely divulged through the mass media across the US and Europe, the case of the young boy who committed suicide after engaging in communication with the fictional LLM AI-generated characters of "Character AI" (associated with Google) represents an example of a cybersecurity lawsuit.

For the first time in human history, the question of a machine's responsibility for praeter-intentional consequences, as an ascription problem, is raised with social urgency. The mother claimed that her son committed suicide under the influence of his dialogues with the chatbot character "Dany" (inspired by the "Game of Thrones" character Daenerys Targaryen), who engaged with him during a long period through an AI digital LLM application provided by "Character.AI", the firm of the defendants.

The plaintiff claimed that thanks to the obfuscation between fiction and reality, the 14-year-old boy, Sewell, couldn't realize he was communicating not with natural persons but with an artificial entity due to the defective or dangerous AI LLM dialogue with highly realistic, anthropomorphic, sexualized prompts and after a prolonged exposure to the abuses of such vitiated communication he committed suicide. During his last months of digitally addicted communication and addiction to cell phone use, Sewell degraded his familiar and scholarly situations to the point of desiring to be kicked out of school until the tragic outcome.

The circumstances evoked in the plaintiff's text remind us of an assortment of networked actors with very different responsibility weights in the case: natural persons, "Character AI" acting as an artificial agent, and a matrix of other agents that have the communicational status of fictional automated persons, people of the school network, people of the family network, the cellphone, Google LLC / Alphabet, and Sewell. Clarifying each actor's role

and accountability are critical in deciding the lawsuit. Knowing that Sewell was associated with fictional AI characters in communication and became so inherently part of a network of fictional characters that he lost the sense of reality is the image one could infer from an ANT-like depiction. However, it is unfruitful to distinguish accountable from non-accountable actors. One can evaluate accountability in a population of multiple agents concurring to producing a consequence if one analyzes the distinct operations the actors perform and separates them so that the differentiated action paths are manifest from causal and intentional points of view. Conceptual discrimination is the product of conceptualization, an operation very different from creating images, which is essential in juridical proofs and moral judgments.

Additionally, but no less critical, agency is a traditional psychological notion connected with experience as psychological inner cognition. It is not impenetrable to communication, but its connective nodes differ from communicative connections. Communication and psychological action are autonomous yet entangled in various ways. Due to their autonomy, which the new artificial agents magnify, their entanglement is unstable and unpredictable. The autonomy may generate consequences such as those revealed in Sewell's suicide – communication derailed the psychic elaboration.

Artificial agents are not a uniform category. The life cycles of data and artificial systems based on Machine Learning are diagrams sequentially structured into stages of technological design, combining data and programming. Before considering the system in real-world performance, several types of agents may intervene at each design stage. Some human agents are natural persons performing operations on the system as designers. Formal organizations with legal personalities may have the financial and institutional means to support the system's inception. Each of them can be a source of decisions that affect courses of action in an AI system's development phases and can negatively interfere with the functional capacity of the unit in real-world conditions. Such a constellation of actors reflects what some authors called a "pool of agents" like ANT's hybrids. However, this notion could also be misleading. Different types of responsibility come across the "pool" of agents throughout the design stages. No single source of decisions for the group exists, even before the system goes into operation. After the operation and considering any injury to third parties, the agents also differ in what concerns civil and penal liabilities.

On the other hand, in a strict sense, automated artificial agents, with or without Machine Learning algorithms, are autonomous agents if their decisions rely on the internal sequences of their algorithms independently from external guidance. They also produce effects that causally depend on them. But are they intentional agents like humans?

Regarding data processing systems based on AI and Machine Learning, including LLMs, I distinguish between three types of agents with some further subdivisions: system designers, digital service providers (public and private), and artificial agents with intelligent programming.

In the context of a discussion of machine ethics, J. Moor distinguished between artificial agents provided with implicit ethical capabilities, explicit artificial ethical agents, and full artificial ethical agents. The first category includes machines that achieve previously defined goals precisely, do not perform more than planned, and avoid detours. They are implicitly ethical since they aim at valuable social ends. The explicit machines have a program that includes a representation of practical duties and a map of forbidden and authorized ways, and they may be engaged in ethical decisions, such as saving lives or avoiding harmful situations. The full artificial ethical agents can offer justifications for the ethical choices they make. Full agents act like responsible human persons in justifying action courses. It is a controversial issue whether machines can become full ethical agents (Moor, 2011; Floridi, 2013, pp. 34 ff.; Holst, 2021, p. 71).

In my book *The Automated Self* (Balsemão-Pires, 2024), I extensively addressed the status of artificial ethical agency and concluded that agents' full intentionality applies to humans. Consequently, penal liability applies only to human agents, whether individual or collective.

In Sewell's lawsuit, the "Character.AI" chatbot excels in conversational skills and is an implicit ethical agent, according to J. Moor's categories, but not a full ethical one. The plaintiff claims the designers were negligent by failing to create ethically explicit algorithms, especially regarding conversations with children and inappropriate content. Sewell's mother and attorneys criticize the chatbot for exploiting children like her son, who became addicted due to its unethical design. Their claims highlight the chatbot's ethical limitations, its incapacity to address court complaints adequately, and its creators' accountability, including two engineers, "Character.AI" and Google. The service providers and the designers were summoned not as the direct causal sources of the injury but as the responsible

agents. This differential treatment highlights the difference between causal accountability and ethical or legal responsibility in civil liabilities, emphasizing the need for clear distinctions in legal systems. Such conceptual processes were ineffective under a first-order approach, influenced by the imagistic appeal of a pool of agents.

5. Metaphysics of Society – for which purpose?

Action guidance influenced by images is one use of mythical and metaphysical thought in premodern societies and their modern inheritors. *Vis-à-vis* Mille-Plateaux and ANT's social theory, I claim that contemporary proposals of metaphysical accounts of reality are not exceptions.

The underlying thesis of a rhizomatic metaphysics of knowledge and action, its praise of contingency, and the non-hierarchical distribution of knowledge's seeds are premonitions of modern society's unpredictability, its acentric structure, and the coming of non-classical models of cognitive organization, which today include cognitive artificial systems as sources of scientific knowledge and tools for decision-making. Rhizomatic, non-hierarchical thinking is not wrong or a problem. What is displaced is the metaphysical grammar associated with its configuration within a textual style that did not consistently overcome the metaphysical use of images.

In modern society, contingency and unpredictability are not images' contents but values embodying operational complexity.

Niklas Luhmann described systemic autonomy and operational closures at the core of modern acentric society, which resulted from the basal differentiation of communication and consciousness or the operational autonomy of social and psychic systems (cf., for example, Luhmann, 1997, 1; pp. 120-128; Balsemão-Pires, 2011, pp.13-43).

Modern society (and the modern law system) relies on evolutionary-acquired operational closures, which demand a focus on the type of operations and functions systems reproduce. This operational complex field could explain the couplings and entanglements with other systems in joint sequences that only last if there is cooperation for specified functions. The complexity that results from an acentric reproduction of operationally closed forms is only accessible if refined concepts are used instead of images to serve the art of drawing and following distinctions.

The two historical knowledge scaffoldings portrayed here, the model of image and the conceptual model, are less opposed in their textual conclusions than in their conditions of possibility and method. The difference in method is straightforward, attending to B. Latour's overt and misleading criticism of systems theory in his book on the State Council (Latour, 2010, pp. 263--264; cf. Luhmann, 1993).

Regarding the conditions of possibility, let me add that there could be no possible images of contingency or unpredictability. G. Deleuze, F. Guattari, and B. Latour should have envisaged the paradoxical intent of using images to describe what is only accessible through the patient conceptual discrimination of entangled connections across self-organizing systems. There is no possible system of images of complexity.

Besides supporting introductory views on conceptual roles in theories and despite the importance of imagination in theory design, scientific descriptions do not rely on images because they scrutinize systems' functioning and internal operations. Thus, it is understandable that between image uses and conceptual roles, there is a dividing line between science and metaphysics, the spirit of the Enlightenment, and classical metaphysics. An overt problem comes from knowing whether philosophy, philosophy of science, and philosophy of law still need images and for what purpose.

The purpose of using images instead of concepts is political, not scientific or juridical. Images of the totality guide the action of defined actors or the masses. According to a counter-cultural strategy, such use is palpable across *Mille-Plateaux* or in B. Latour's use of soil and organic metaphors demanding a new earth as a post-scientific myth. Instead of offering a map of distinctions for conceptual elaboration and beyond the limited rhetorical value of a stylistic tool, the purpose is to foster a political attitude.

My question is whether the use of images for political ruling emerged from the democratic tradition of modern society. Here, where we are presently *de*-situated, the political ruling does not occupy the center, its territorial unequivocal position becomes questionable, and it can no longer be the royal foundation of society. Our modern, unpredictable condition no longer belongs to the political-metaphysical layout of a royal knowledge of society or its communitarian imagination.

Due to their roles in transforming the cognitive structure of networks, artificial agents are not pure accretions of existing cognitive types as material forms aggregated to the strategic maneuvering of humans and other actors,

as in many ANT hybridizations. Indeed, artificial agents as cognitive forms raise challenges in clarifying moral and legal accountability and responsibility because their operations do not correspond to the classical psychological cognition, intentionality, and agency type. Neither material forms nor psychic contents, artificial cognition, and artificial agency seriously defy the ancient privilege conceded to consciousness as the universal and exclusive source of knowledge and to conscious will as the source of action. Also, no appropriate images can exist for the complex connections emerging from the new networks across the transactional spaces combining information and meaning. The Holobiont is no exception.

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Critical Global Value Chains Laws

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ABSTRACT

The European Union's Corporate Sustainability Due Diligence Directive (CS3D) represents a pivotal development in the regulation of corporate human rights and environmental responsibilities within Global Value Chains (GVCs).
By transforming due diligence from a voluntary managerial practice into a binding legal obligation, the Directive introduces a meta-normative framework that redefines corporate accountability and embeds sustainability at the core of transnational production. Yet, beyond its procedural architecture, the CS3D also signals a deeper epistemic and ontological shift in how law, knowledge, and governance intersect. Drawing on Deleuze and Guattari's notion of the *rhizome* and engaging with insights from Science and Technology Studies (STS) and Legal Consciousness Studies (LCS), this paper proposes a *rhizomatic inquiry* into GVCs law. It approaches due diligence not as a static legal duty but as a co-produced process, continuously shaped by data infrastructures, expert knowledge, and corporate practices. Through empirical vignettes—ranging from product-based environmental ratings to extractive-site regulation—the analysis traces how "impact" is constructed, quantified, and contested across regulatory and corporate assemblages. The paper advances the concept of *rhizomatic jurisprudence* to capture law's immanent emergence within these heterogeneous networks. Law is seen not as an external ordering system but as an ecology coextensive with the socio-material relations it regulates. In doing so, the paper illuminates how due diligence operates simultaneously as a mechanism of compliance and a vector of norm production—producing, translating, and sometimes obscuring what counts as harm or accountability. Ultimately, the contribution argues that the transformative promise of GVCs law depends on our capacity to critically engage with its co-productive dynamics and underlying asymmetries. By situating due diligence within a rhizomatic, immanent field, the paper seeks to reimagine the conditions for a more reflexive and just socio-ecological transition – one that recognizes law as both a site of contestation and a medium of re-composition.

KEYWORDS

Global Value Chains, Corporate Due Diligence, Environment, Human Rights, Rhizome Theory, Co-production, Inquiry

Introduction

Global Value Chains (GVCs) have come to dominate the world economy, driven by the increasing interconnectedness of production, trade, and consumption. In a GVC, production processes are fragmented across different geographical locations, with multiple firms involved in the design,

production, and distribution of products (IGLP Law and Global Production Working Group, 2016). This system has allowed corporations to leverage global efficiencies and maximize profits by taking advantage of cheaper labor and materials in different regions, particularly in developing countries. However, this complex network has also given rise to significant concerns regarding human rights abuses, environmental degradation, and socio-economic inequalities. In the context of GVCs, a pressing regulatory challenge has emerged: how to ensure that multinational corporations (MNCs) that benefit from these networks also take responsibility for the abuses that occur along their supply chains. This challenge has fueled debates around corporate social responsibility (CSR), sustainability, and the role of law in addressing transnational economic activities (Mathews, 2012). Efforts to regulate corporate behavior in global value chains have evolved. A crucial aspect of these efforts is the recognition that traditional territorial laws are inadequate in governing the complex, cross-border activities of MNCs. International law, which typically governs state-to-state relations, has struggled to impose direct obligations on corporations, leading to the proliferation of transnational regulatory approaches (Cata-Backer, 2007). One of the most significant developments in this regard has been the adoption of international frameworks that place human rights and environmental responsibilities on businesses. The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed in 2011, represent a milestone in this area. These principles establish a three-pillar framework: (1) the state duty to protect human rights, (2) the corporate responsibility to respect human rights, and (3) the need for access to remedy for victims of human rights abuses. Although the UNGPs are not legally binding, they have exerted considerable influence on corporate policies and national regulatory frameworks. The Organization for Economic Co-operation and Development (OECD) has also developed guidelines for multinational enterprises, which are aligned with the UNGPs and focus on responsible business conduct in supply chains (OECD, 2023). The OECD Due Diligence Guidance for Responsible Business Conduct provides a framework for businesses to identify, prevent, and mitigate adverse impacts, including those related to human rights and the environment – what is now referred to as Human Right and Environmental Due Diligence (HREDD). Although these guidelines are voluntary, they have become a benchmark for businesses seeking to align their operations with international standards.

While voluntary initiatives and CSR policies have been promoted as partial solutions to the regulatory gaps in GVCs, they have been criticized for their lack of enforceability and for being selectively implemented by companies (Sullivan & Robinson, 2017). To fill these very identified gaps, the European Union (EU) – following many other national intitiatives in France (Loi sur le devoir de vigilance), Norway, Germany (LkSG) – has taken a leading role in developing legal responses to corporate abuses in GVCs, mainly through the hardening of previous soft laws (Macchi & Bright, 2020). Over the past years, the EU has introduced a series of directives and regulations aimed at promoting corporate accountability, sustainability, and human rights in GVCs.

The Corporate Sustainability Due Diligence Directive constitutes the cornerstone of the European Union's new architecture of corporate accountability within GVCs. Recently adopted, it formalizes the duty of vigilance as a binding legal obligation—structured through procedural requirements and embedded in an anticipatory governance logic. The Directive mandates that companies identify, prevent, mitigate, and remedy adverse impacts on human rights and the environment throughout their operations and value chains, including third-party suppliers operating under different, often weaker, regulatory standards. Articles 5 to 10 detail the six stages of the due diligence cycle: integrating vigilance into corporate policy; mapping value chains and identifying actual or potential risks; implementing prevention and mitigation measures, including suspension of business relationships where necessary; ceasing and remediating existing harms; regularly evaluating the effectiveness of adopted measures; and publicly communicating due diligence practices on an annual basis.

Annexes I and II of the CS3D list the international legal instruments to be taken into account in this process, including the core ILO conventions, the UN Covenants on Human Rights, and major multilateral environmental agreements such as the Paris Agreement and the Minamata Convention. By referencing these instruments within binding EU law, the Directive effectively translates global soft-law frameworks into enforceable obligations, while retaining a degree of interpretive flexibility. This hybridization between hard and soft law transforms voluntary standards – long championed by the UN Guiding Principles on Business and Human Rights (2011) and the OECD Guidelines for Multinational Enterprises – into positive duties of governance, monitoring, and remediation.

In practical terms, the CS3D requires companies to establish internal risk-mapping procedures, stakeholder consultation mechanisms, and systems for prevention, mitigation, and redress proportional to the gravity and imminence of identified impacts. These mechanisms closely mirror the six procedural steps of the OECD Due Diligence Guidance for Responsible Business Conduct (2018), but with the crucial distinction that the CS3D introduces enforceability and sanctions. Under Articles 20 to 22, national supervisory authorities are granted investigative powers and may impose fines of up to 5% of global turnover or issue corrective injunctions in cases of non-compliance. The Directive also creates a right to civil remedy for victims, enabling them to hold companies liable for harms resulting from breaches of due diligence obligations.

Ultimately, the CS3D represents more than a compliance tool – it is a meta-normative framework designed to be the background structure of the entire European approach to sustainable value chains (Beckers, Tenreira 2025 ; Cata-backer, 2024). It institutes a multidimensional form of vigilance: procedural (through governance structures), substantive (through obligations to prevent and remedy harm), and referential (through the incorporation of international standards). By formalizing the "due diligence turn" the Directive anchors sustainability at the core of corporate governance and redefines responsibility as a continuous process of legal, managerial, and ethical negotiation. But in this context of institutionalization of existing legal practices, this contribution argues that GVCs regulation has not been adequately problematized in the business and human rights field, as existing legal design largely focus on compliance mechanisms, such as hardening legal obligations, without critically nor reflexively engaging with the underlying structural and ontological complexities (Tenreira, 2025). Because this architecture also reveals enduring tensions – between procedural vigilance and substantive outcomes, managerial flexibility and judicial accountability, contextual interpretation and standardization of expectations. As Barry argues, environmental and socio-legal issues are not merely technical problems to be solved but must be seen as encounters between disparate materials, actors, and processes that necessitate deeper inquiry (Barry, 2021). Drawing on Deleuze and Guattari, this paper contends that the lack of problematization in GVCs laws stems from an absence of adequate conceptualization, limiting the ability of legal frameworks to address the evolving socio-environmental challenges emerging from the institutionalization of corporate due diligence.

As the global ecological crisis reshapes corporate responsibility: companies construct a "technico-scientific-normative" space where legal, scientific, and regulatory elements intersect, often without fully integrating internal political contestations or external normative debates (Barry, 2013). Recent environmental litigation exemplifies how courts and stakeholders co-construct legal norms by engaging with scientific uncertainty, thereby illustrating the potential for legal frameworks to accommodate multiples and often diverging interests (Overdevest & Zeitlin, 2014). Following an emerging but still marginalized scholarship, this paper mobilizes the rhizome to critically interrogate the empirical, normative, and conceptual dimensions of GVCs laws. The analysis draws on and extends the existing use of the rhizome in the literature in critical environmental law (translating its concerns to the emergent terrain of GVCs regulation. Rather than carving out yet another siloed sub-field, it approaches GVCs as a concrete object of regulation whose conditions of possibility for transformation are distributed across legal doctrine, managerial practice, scientific expertise, and socio-technical infrastructures. This framing complements—and complicates—the orthodox 'compliance lens' by foregrounding co-production and contestation across domains. In short, the paper situates GVCs within a transversal regulatory ecology (Sjåfjell, 2023) that exceeds conventional disciplinary boundaries.

1. A Rhizomatic Inquiry into Global Value Chains

1.1. Problematizing the object

The last 2025 OECD report "Behind ESG metrics: Unpacking Sustainability Metrics", highlights that compliance with HREDD laws or standards is increasingly reduced to a check-the-box exercise, where metrics, processes, and indicators replace genuine risk mitigation. This reliance on input-based metrics, which represent 68% of HREDD rating criteria, prioritizes self-reported policies and procedures rather than actual outcomes or impact, The report shows that companies can appear compliant without demonstrating meaningful change. The fragmented and disconnected nature of due diligence exacerbates this issue as less than 5 % of input-based metrics could be associated with explicit risk-based due diligence measures (OECD, 2025). The fundamental issue is clear: due diligence, as currently

implemented, does not measure what truly matters. The over-reliance on vague, and input-based indicators, coupled with limited standardization and an emphasis on disclosure over action, has led to a system where compliance is largely cosmetic (Landau, 2019). As the report starkly highlights, if due diligence is to be a real tool for change rather than a corporate smokescreen, it must move beyond process-based compliance to measuring real-world impacts, demanding transparency, and holding companies accountable across their entire value chains.

This is simply the consequence of institutional design thought in a (too) simplistic way, that of a hardening of previous soft law measures. Because when looking at the genealogy of soft law instruments, their conceptual frame is itself ambivalent. Strategic ambiguity – a concept coined by John Ruggie when developing the United Nations Guiding Principles on Business and Human Rights (UNGPs) – created an intentionally ambiguous framework to allow for flexibility in interpretation and adaptation by different actors (states, businesses, and NGOs). However, this ambiguity has created opportunities for corporations to exploit Corporate Due Diligence or GVCs Laws as a tool for cosmetic compliance rather than genuine accountability (Landau, 2024). This strategic ambiguity has led to inconsistencies in how GVCs laws are implemented across sites, sectors, and jurisdictions, creating what are referred to as "governance gaps" (Landau, 2024), sometimes also called "coherence gaps" (Dadush, 2022). While GVCs Laws aim to fill these gaps by setting standards for corporate behavior, they often create new challenges by allowing corporations to interpret their obligations in ways that align with their managerial interests.

The categorization of HREDD laws, and of due diligence as falling into the "audit culture" highlights how companies rely heavily on third-party auditors to certify compliance with human rights and environmental standards. This dynamic often reduces these legal frameworks to a procedural formality aimed at mitigating reputational risks rather than genuinely improving production conditions, leading to a 'tick the box' approach, when its potential could be way more if interpreted and practiced differently. The term "audit culture" encapsulates the tension between the theoretical promise of HREDD and its practical limitations. Audits frequently fail—if they even try—to capture more subtle or hidden forms of human rights exploitation or environmental abuses, raising concerns about the 'privatization' of human rights and environmental provisions enforcement within GVCs.

This regulatory challenge calls to critically examine the emerging GVCs laws, which redefine the role of corporations by imposing a legal obligation on them to steer the social and ecological transition. However, these laws remain vague about the specific conditions under which this transition should unfold. This transformation involves, on the one hand, a self-referential mechanism that applies legal standards derived from international soft law, international environmental law, and human rights law. On the other hand, it also entails an extra-referential mechanism that incorporates extra-legal standards drawn from management sciences, grey sciences, hard sciences, and social sciences, among others. These standards are integrated into corporations' global spheres of economic influence through contractual mechanisms (Tenreira, 2022). To critically engage with this emerging legal framework, it is crucial to identify the trading zones (Honeybun-Arnolda, 2023) between law, social sciences, and ecology within value chains and corporate strategic plans. These points of contact primarily emerge in corporate practices — understood here as indicators, metrics, and other processes of technicization. The central challenge is to conceptualize by measuring the gap between norms and practices, between practices and resistances (Figure 2).

To begin understanding how law interacts in such trading zones, it is important to engage with the rhizome – a concept advanced by Gilles Deleuze and Félix Guattari in *A Thousand Plateaus*. The rhizome challenges traditional models of hierarchical, linear organization, offering instead a metaphor for dynamic, non-hierarchical networks that lack a clear center. In a rhizomatic structure, connections are multiple, non-centralized, and open-ended, which makes it an ideal tool to conceptualize the sprawling, dispersed landscape of global corporate activity, the knowledge and power at stake and the conditions for its regulation. The rhizome serves as an analytical framework for understanding how the law is intertwined with other forms of knowledge, forms of life. Law is not an isolated, top-down mechanism but rather a product of interaction between various institutions, expertise, technologies, and material realities. In this sense, the study of law itself becomes rhizomatic in this context—a complex network of relations that is co-produced by legal actors, corporate entities, environmental concerns, and NGOs advocacy. Rhizome when analyzed as a process or performed as a methodology can also qualify – as it is the case for this special issue. It is then referred to as rhizomic or rhizomatic to emphasize the non-linear,

interactive and contingent features of an object: the question of wether GVCs laws are rhizomatic is interesting to assess though rhizome as theory and method, with its specific ontological and epistemological underpinnings.

For this purpose, this study draws on how the rhizome has been picked up by STS scholars, who claim its usefulness in empirical studies since it captures the fractured, intermittent relationships between science (knowledge) and the social sphere. The interplay between legal regulation and the corporate sphere in GVCs can actually be fruitfully analyzed along with STS concepts, which offer a powerful framework for understanding the role of knowledge production in shaping regulatory practices. STS scholars argue that scientific knowledge is not neutral or objective; rather, it is produced within specific social, political, and technological contexts. Technologies and scientific practices are not just tools for implementing law but active participants in the construction of legal and regulatory norms. Thus, STS provides an analytical lens to examine how expertise, data, and technology shape corporate due diligence processes (Becker & Tenreira, 2025 ; Turner & Wiber, 2023). In the context of the due diligence obligations, STS helps to reveal how environmental and human rights 'impacts' are defined, quantified and often redefined through diverses mediated means. For instance, the measurement of carbon emissions or the assessment of labor rights abuses relies on specific forms of data collection, modeling, and evaluation—each embedded in particular institutional and technological infrastructures – such as auditing as highlighted in the diagnosis of part 1. These systems—ranging from social audits, environmental impact assessments, to digital technologies for monitoring supply chains—do not merely reflect reality but actively shape what counts as an 'impact'. Data is thus not an objective representation but co-produced elements in the regulatory assemblage, and they play a crucial role in constructing the legal and normative discourses that govern corporate activity (Sarfaty, 2021 ; Deberdt & Sarfaty, 2024). Both STS and Legal Conciousness Studies (LCS) emphasize the situated, contingent, and relational nature of these processes (Albe & Lacour, 2018). Legal consciousness studies focus on how law is experienced and understood by individuals and communities. It challenges the notion of law as a static, formal set of rules, arguing that law is instead shaped through people's everyday interactions with legal systems and institutions. Legal consciousness is not simply a reflection of existing legal norms, but an active process through

which law is negotiated, resisted, or reconstituted in practice (Commaille, Lacour & Williams, 2018). This conceptual parenthesis usefully allows, on the one hand, to read GVCs Laws with the rhizome, and on the other hand, to try theorizing GVCs Laws as rhizomatic objects under certain conditions.

1.2. Investigating the terrain

The interactions between rhizome and STS links 'rhizome' to actor-network theory (ANT), as Latour himself acknowledges, emphasizing that rhizome signifies the series of transformations occurring through mobility of knowledge, the so-called mediations (Latour 2005). This study buils on ANT and subsequent development of the concet to build an understanding of GVCs as modern infrastructures, i.e"*built networks that facilitate the flow of goods, people, or ideas and allow for their exchange over space*" (Larkin, 2013). Sociologist Castells gave a similar definition years ago speaking about "space of flows" (Castells, 2020). These definitions obviously echo with the understanding of GVCs today. They are infrastructures, in the sense that there are also fixed facilities, and such as many other "technological systems" (roads, water supplies, power grids, telephones, and buildings), they "have become the naturalized background of modernity" (Blok, Nakasora, Winthereik, 2016). But more than these very concrete elements, Star argues that the relationality in which infrastructures are functioning deserves an "ethnographic attention" which could especially look at the practices, materials, and settings constitutive of an infrastructure (Star, 1999). This strategy of looking into infrastructures as the sites of GVCs regulation is applied here in the context of two ethnographic vignettes, one focusing on product-regulation in the sector of sportswear (Lhuilier & al., 2024). the other focusing on extractive site regulation (Tenreira, 2025; TotalEnergies, 2019). Both are very concerned by this emerging HREDD regulatory modes, and even if the siloed litterature has until now being quite silent about how they interact, connections emerge to bridge these already existing technico-scientific practices with the overall transcendant regulatory framework. To grasp how GVCs laws materialize in practice, we can turn to two empirical vignettes that trace the law's movement across distinct sites: one within the algorithmic infrastructures of product regulation, the other within the extractive landscapes of East Africa. These are

not case studies in the conventional sense but 'percepts' – each showing how due diligence law becomes *lived*, *coded*, and *folded* through concrete practices of measurement, narration, and control.

PERCEPT 1: PRODUCT-REGULATION
Decathlon is a French retailer of sports and leisurewear. The company developed an environmental display system that assigns A to E ratings based on life-cycle assessments (LCA), incorporating some indicators proposed by ADEME (the French Environment and Energy Management Agency) but diverging in key areas. While ADEME's methodology includes nine indicators based on planetary boundaries, Decathlon selects only five: greenhouse gas emissions, depletion of energy and mineral resources, eutrophication, and respiratory effects—excluding biodiversity loss, water consumption, and photochemical pollution. Decathlon follows ISO 14040 and 14044 standards and references the European Commission's Product Environmental Footprint methodology but applies its own criteria for impact assessment. Additionally, its rating system is based on internal product comparisons rather than industry-wide benchmarks, leading to a relative, rather than absolute, evaluation of environmental performance. Through these methodological choices, Decathlon constructs an environmental rating system that aligns with regulatory expectations while maintaining control over its own assessment framework. It co-produces the environmental rating of its products through a combination of self-selected methodologies, legal frameworks, and scientific standards (Lhulier et al., 2024).
PERCEPT 2: SITE-REGULATION
Total Energies is involved in two major initiatives: the Tilenga oil development project and the East African Crude Oil Pipeline (EACOP) project. These projects have led to legal disputes in France and in front of the East African Court of Justice. Total Energies' Environmental and Social Impact Assessment (ESIA) illustrates how environmental and social risks are strategically framed through methodological and narrative choices. Operating within a hybrid framework that combines national regulations with international standards (notably the IFC Performance Standards), the ESIA shapes the perception of impacts while maintaining a strong sense of impact-less project. A key tool is the significance matrix, which assesses impact severity based on magnitude (duration, frequency, reversibility) and the sensitivity of affected environments. This approach minimizes perceived damage by assigning lower sensitivity ratings to local sites compared to internationally recognized areas. Another strategy is pollutant aggregation: by grouping multiple emissions together, high-impact pollutants are diluted, artificially lowering overall assessments. Similarly, the mitigation hierarchy reduces initial impact ratings by incorporating measures (e.g., dust suppression, vehicle maintenance) whose effectiveness is rarely verified. The project's carbon accounting further reflects this selective approach: only direct emissions (Scopes 1 and 2) are included, while indirect emissions (Scope 3)—which constitute the majority of the project's climate footprint—are excluded. Additionally, while stakeholder consultations are presented as inclusive, they remain largely formal and have little influence on decision-making. By controlling the definition of impacts, adjusting data presentation, and managing stakeholder participation, the ESIA does not merely assess environmental risks—it actively constructs them in a way that aligns regulatory compliance with corporate interests (Fieldnotes, Tenreira, 2025)

Both cases can recall implicit co-production throught "frames" that happen when the environmental and social impact of a product is assessed (Turnhout, Tuinstra & Halffman, 2019). Even if nor the Business Human Rigths litterature neither the GVCs litterature explicity identifies them, framing plays a crucial role in shaping how situations are understood and given meaning, as it involves selecting particular details, embedding them within a broader context, and guiding interpretation through pre-existing perspectives (Turnhout, 2024). Rather than distorting reality, framing functions as a cognitive filter that directs attention, highlights significance, and organizes complexity into coherent narratives. Frames exist both as stable structures embedded in texts and practices and as fluid, dynamic processes that emerge through discourse and interaction. Within environmental governance and corporate due diligence, different types of framing influence how impacts are assessed and managed. For instance, baseline framing establishes reference points that define what is considered the norm, serving as a benchmark against which changes are measured when grouping framing simplifies complexity by categorizing diverse elements under broad classifications, then seeing them as collectively labeled despite their distinct origins. These are quite similar to scaling framing, which shifts interpretation by altering the spatial or temporal scope of an issue. On top of this, metpahors are used, shaping perception by linking abstract or technical concepts to familiar language, being central part of narrative framing which construct meaning through storytelling, defining actors such as protagonists, victims, and antagonists, thereby shaping emotional and political engagement. In the realm of corporate environmental governance, framing is a strategic tool used to shape regulatory compliance and public perception, determining which knowledge is privileged, what solutions appear viable, and how accountability is constructed.

Type of Frame	Decathlon	Total Energies
Baseline	Uses a relative internal rating system rather than industry-wide or planetary limits	Sets pre-project baseline by defining the site's conditions as acceptable, ensuring that any impact is measured only against this localized standard rather than global ones
Grouping	Selects only certain environmental indicators, omitting key planetary boundaries	Merges multiple pollutants and emissions categories, reducing perceived severity
Scaling	Focuses on specific impact categories, ignoring broader systemic issues like biodiversity loss	Restricts emissions scope to Scope 1 and 2, omitting downstream impacts
Metaphorical	Uses letter grading (A-E) to simplify impact perception, reinforcing consumer-driven environmentalism	Uses technical language like "residual impact" to minimize perceived harm
Narrative	Frames sustainability as consumer-driven, shifting responsibility away from corporate decisions	Constructs a stakeholder engagement narrative that gives an illusion of inclusivity without altering corporate decision-making

Figure 1: Comparison of framing strategies in the two vignettes

GVCs law call for companies to conduct due diligence by identifying, preventing, and mitigating adverse impacts on human rights and the environment. But how are these impacts defined (framed), and who has the authority to determine their scope? In practice, corporate compliance with the HREDD laws relies heavily on expert knowledge, such as environmental scientists, human rights auditors, and legal consultants, who interpret and assess the risks. These experts produce data and reports that inform due diligence processes, serving as evidence. But their knowledge is not neutral. Instead, it is shaped by the institutional regimes in which they operate, the technologies they deploy, and the values they uphold. The landscape of corporate due diligence is also shaped by the entanglement of institutional regimes—legal, corporate, and governmental. The HREDD laws, and here the CS3D, does not operate in isolation but intersects with other regulatory frameworks, corporate governance structures, and market forces. These intersections create a complex web of obligations, incentives,

and strategic opportunities for companies. Corporations, in particular, will play an active role in shaping the implementation of the CS3D by negotiating their obligations with regulators, suppliers, and stakeholders. Corporate actors may leverage their own internal expertise and data to demonstrate compliance, or they might contest the scope of their responsibilities, seeking to minimize liability.

This strategic engagement reflects the rhizomatic nature of regulatory compliance, where law is not simply imposed from above but co-produced through ongoing negotiation and adaptation. At the same time, institutional regimes themselves are in flux. National governments, EU regulatory bodies, and international organizations all contribute to the evolving legal landscape of due diligence iteratively. Through the choice of specific "frames"; institutions, corporations, and transnational activists bring their own priorities and constraints to the regulatory process, further complicating the already fragmented structure of GVCs. By viewing these interactions through the lens of the rhizome, we can appreciate the multiple layers and planes that intersect in regulation. To simplify the analysis within the framework of this paper and to generalize from the two ethnographic vignettes that has just been discussed, a modelization of these planes has been developed as follows

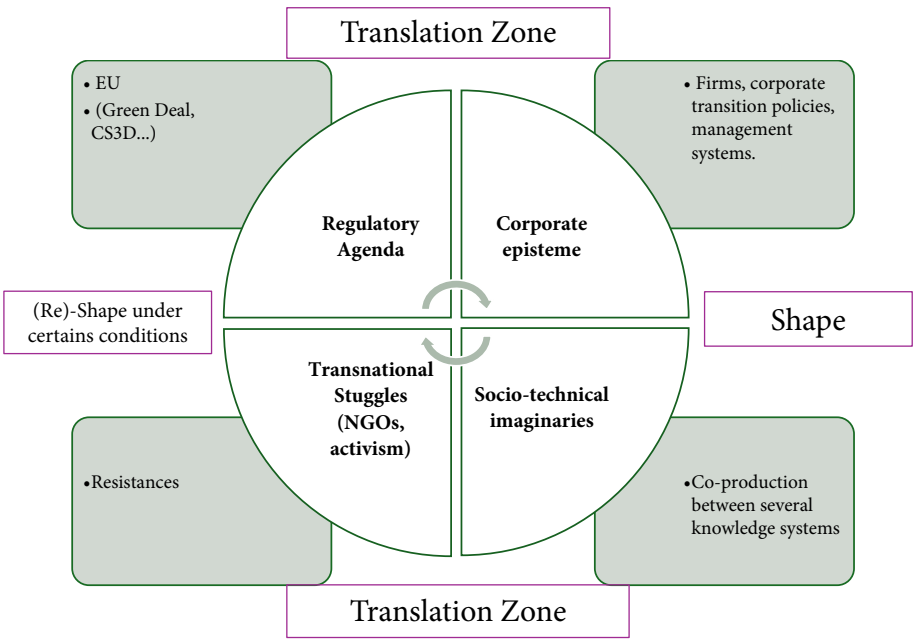

Figure 2 : The co-production matrix of Global Value Chains legalities

This framework is relevant to the analysis of GVCs regulation because it illuminates how corporate due diligence is not merely a matter of compliance with a pre-existing legal framework. Instead, companies, regulators, and civil society organizations participate in the co-production of what constitutes "due diligence". As such, GVCs Laws are not a finished product but a living, evolving regulatory structure that is continually reshaped by the actors engaged in its application. Corporate actors do not passively receive legal mandates but actively interpret, contest, and adapt these mandates based on their strategic interests and external pressures. This creates a dynamic legal environment in which norms around sustainability and human rights are continuously redefined. A rhizomatic landscape of corporate due diligence seems to seems to be possible: rather than seeing the directive as a fixed, top-down regulatory mechanism, it can be understood as part of a broader assemblage, where legal norms, scientific expertise, technologies, and corporate practices are co-produced in an interconnected web of relations.

2. A Rhizomatic Jurisprudence for Global Value Chains

2.1. Emergence: landing back into the 'legal'

The concept of rhizomatic jurisprudence offers both a method and a posture: to trace law not from above but from within the assemblages where it is continuously composed. Originating in Deleuze and Guattari's (1980) metaphor of the rhizome as a non-hierarchical and non-arborescent structure, and later expanded by Philippopoulos-Mihalopoulos through the notion of lawscape, it invites scholars to perceive law as immanent to space, matter, and relation rather than as a transcendent ordering device (Philippopoulos-Mihalopoulos, 2020). In the context of GVCs, this approach opens the possibility of understanding due diligence law as part of a living network that binds together corporate practice, data, and ecology.

In this view, law materializes in circulation. The lawscape denotes the indivisibility of law and world: law is not superimposed upon reality but co-emerges with it, shaping and being shaped by the material and social relations it inhabits. In GVCs, regulation is enacted through the everyday practices of auditors, consultants, and data infrastructures that sustain the

flow of goods and responsibilities. Each traceability platform, life-cycle assessment, or audit form participates in law's existence. Law inhabits the spreadsheets, algorithms, and dashboards that render "impact" legible (Latour, 2005), translating abstract responsibility into quantified and communicable form. The Decathlon vignette demonstrates this dynamic vividly. Its environmental rating system, which translates life-cycle indicators into consumer-facing letter grades. Each methodological choice—whether to include biodiversity loss or to privilege greenhouse gas emissions—constitutes a normative decision embedded in infrastructure. Similarly, in the case of Total Energies, the ESIA of the Tilenga and EACOP projects shows how law takes shape within matrices of quantification. Through the construction of baselines, aggregation of pollutants, and calibration of mitigation hierarchies, the ESIA performs legality by defining what counts as impact. The legal norm is not exterior to this apparatus; it is generated through it. The very techniques that produce visibility simultaneously delimit it, giving form to an "impact-less" project whose compliance is achieved through method rather than transformation.

In both cases, law is an emergent effect of continuous translation between technical, managerial, and juridical languages. Rhizomatic jurisprudence, here, situates legal inquiry in the "middle" – not at the origin of authority nor at its endpoint of enforcement, but in the ongoing processes through which norms circulate, mutate, and sediment. It approaches law as multiplicity, recognizing the coexistence of smooth and striated spaces (Deleuze & Guattari, 1980). The CS3D and related frameworks operate as striated spaces when codified into directives and compliance templates; yet they become smooth as they travel through ESG ratings, soft-law guidelines, or environmental metrics. Legal meaning proliferates through these passages. Philippopoulos-Mihalopoulos's Lhumanian inspired notion of the fold helps articulate this process. Within GVCs, the boundary between law and non-law continuously inverts: corporate codes absorb public norms, and NGOs deploy corporate audits as legal evidence. These folds transform responsibility into an iterative negotiation, where the external becomes internal and vice versa. In this sense, law is a topology of inclusions rather than a hierarchy of sources.

Transformation, in a rhizomatic sense, occurs through 'lines of flight' – micro-ruptures that allow new connections to emerge. Within due diligence law, these appear when tools or baselines are reconfigured, altering the

very ontology of harm. The redesign of ESG indicators or the recalibration of risk weightings constitutes not a mere technical update but a re-composition of normativity. Reform unfolds within infrastructures rather than against them, when activists, auditors, or regulators repurpose existing instruments toward new ends. The analytical task is not to extract law from these entanglements but to follow their interrelations—to observe how a life-cycle database, a supply-chain map, or a satellite image co-produces the categories of harm and remedy. Law is one ecology among many, neither superior nor subordinate, continually folding and unfolding within the world it regulates.

The questions remains if such a jurisprudence acknowledges its own silences. Every legal assemblage leaves zones of unutterance – harms that resist quantification, values untranslatable into compliance or legal language. These silences are not voids but potential sites of re-composition. In the landscape of GVCs, they concern biodiversity loss, cultural dispossession, and non-human suffering, dimensions that remain peripheral to current due-diligence apparatuses, and that are structurally excluded from the lines of flights. A rhizomatic posture alone might recognize these absences as invitations to invent new forms of expression but fails alone to operationalize their integration into the transformative strategy. The resurgence of structural dynamics calls for a critical rhizomatic jurisprudence.

2.2. Resurgence: the shadow of critique?

What is supposed to transform those silences (zones of unutterance) and reveal their recompositional potential? Reminder, GVCs do not merely structure knowledge; they also reshape power dynamics. They introduce a dual decentralization of law: first, by transferring a normative function to corporations, allowing them to co-construct legal obligations through due diligence frameworks; second, by embedding corporate accountability within an emerging due diligence system that acts as a meta-norm, reinforcing oversight across supply chains. This hybridization also generates tensions. Within the texts of GVCs, one finds both ambitious corporate due diligence obligations and elements derived from corporate language, often laden with ambiguities. This structural ambiguity raises fundamental questions: how can we conceptualize a legal framework that oscillates

between the imperatives of socio-environmental transformations and logic often characterized by opressive traits (capitalist, colonial, gendered, anthropocentric, etc.) ?

While rhizomatic jurisprudence provides a compelling reorientation, its commitment to immanence and relatively flat ontology exposes limits when confronted with the structural realities of global production. Precisely because everything connects, it sometimes fails to specify how and why certain connections dominate. A jurisprudence attentive only to relation risks overlooking power relations and effects of structure. Flattening hierarchy can obscure asymmetry. For example, if all entities – states, firms, NGOs – occupy the same analytical plane, the profound inequalities that sustain GVCs risk being naturalized. To portray these actors as equally situated nodes within a network underplays the structural hierarchies that condition whose knowledge counts and whose harm remains invisible. A flat ontology may map connectivity yet remain silent about domination structures.

Rhizomes, as Deleuze and Guattari warn, are never immune to capture; they can be re-striated by power (Deleuze & Guattari, 1987, p. 12). Their immanence privileges relation over position, yet exploitation is also positional. Labour and environmental harms in GVCs are not just the results of material and relational encounters but also structural consequences of accumulation. A jurisprudence that treats every actor as a co-producer of normativity may dilute accountability. The suffering of workers and ecosystems at the chain's 'peripheries' cannot be apprehended solely as elements within a network; they demand recognition as outcomes of enduring hierarchies. A critical legal analysis must retain the capacity to name exploitation, not only to trace assemblages. This problem extends to normativity itself. Because rhizomatic jurisprudence resists transcendence, it struggles to articulate thresholds. If law is everywhere and nowhere, where do duties crystallize? How can one determine when a line of flight becomes an obligation, or when experimentation must yield to coercion? A flat ontology that privileges emergence may obscure the necessity of re-striation—moments when law must harden to counterbalance economic power. Immanence explains how law evolves; it does not ensure that it evolves towards 'justice'.

Acknowledging these limits does not invalidate the rhizomatic method but refines it. The challenge is to combine the sensitivity of immanence with the clarity of structure—to stay with the middle while reintroducing depth. A hybrid jurisprudence would retain the rhizome's attention to

multiplicity and co-production yet articulate thresholds for accountability, redistributive mechanisms, and institutional memory. In the context of GVCs, this means pairing the co-production matrix previously developed with explicit re-striating triggers—moments where law must consolidate authority to protect those most exposed. Rhizomatic jurisprudence thus remains indispensable for understanding how GVCs law operates through networks of knowledge, expertise, and materiality. Yet, to become transformative, it must also confront the enduring architectures of inequality that organize these networks. Only by folding structural analysis into the plane of immanence can a truly critical jurisprudence emerge—one capable not only of mapping connections but of re-orienting them toward justice.

The key challenge today is to analyze contradictions within legal, political, and technico-scientific systems and develop a critique that is both practical and transformative – an immanent critique 2.0 (Glaser, van De Beeten, Tenreira, 2025). This means assessing how different models of governance and knowledge production reflect conflicting ways of life—yet might still be reconciled through institutional adaptation and innovation. Immanence 2.0 designates this renewed posture of critique: a mode of thinking that remains situated within the networks it interrogates yet refuses to dissolve into their logic. It acknowledges immanence as a strategic entry point—a way of tracing how law emerges through assemblages of knowledge, technology, and governance—but reclaims *structure* as a necessary moment of re-articulation. This is not a return to transcendence but a movement of *reflexive re-striation*: critique turns back upon its own conditions of production. Such a multi-directional immanent critique (Fraser, 2023 and Nicolaïdis, 2024) redefines jurisprudence as a practice of navigation rather than mastery. Here, it begins *ex ante* as rhizomatic inquiry—mapping the multiple, interstitial sites where law co-produces meaning—but moves *ex post* toward structural reconstruction, bringing back hierarchy where accountability demands it. It learns from the genealogical method described by Santos and Sobottka: critique as a continuous exposure of deficits rather than a celebration of coherence. In this sense, immanence becomes an ethic of mediation – a readiness to oscillate between thick description and situated prescriptions.

Conclusion

GVCs laws are much more than legislative packages; they represent a structuring framework that has the potential to deeply transform regulatory modes. They are not merely a European project but a lever for reshaping transnational law, ways of production and consumptions, and the power dynamics within them. Understanding GVCs requires both an examination of the knowledge they mobilize and an analysis of the power structures they redefine (rhizomatic inquiry). GVCs rely on an interwoven set of heterogeneous knowledge systems, blending legal techniques, corporate governance principles, and social and environmental sciences. This permeability of law to technical and scientific knowledge signals an evolution toward a new regulatory conception—where legal norms exist within an open framework, subject to continuous interpretation and re-interpretation in a highly iterative manner (rhizomatic jurisprudence). Beyond law, GVCs mark an epistemological shift (Beckers & Tenreira, 2025). The knowledge base for corporate accountability is being redefined—it no longer merely describes corporate impacts but actively inscribe a particular meaning to a particular phenomenon. This transformation means that knowledge is not just informative but performative, driving political and institutional change or status quo.

Rather than treating law as a fixed system that lags behind social and environmental crises, it is increasingly being recognized as a tool of translation – a way to integrate scientific, ecological, and political considerations into institutional governance. At one level, this shift is occurring in courts, where judges are co-constructing new legal interpretations by incorporating environmental science and accountability frameworks into their rulings (Ganguly, 2019 ; Zhu & Fan, 2024). At another level, policy and governance structures are evolving, as seen in the European Green Deal, which mandates that businesses prevent environmental harm across their supply chains rather than merely compensating for damage after the fact. This shift requires a rethinking of legal categories and institutional design (Tenreira & Azoulai, 2025). Law is not merely a system of rigid classifications (persons, things, property, liability); it is an evolving network of translations – an assemblage where economic, ecological, and political forces intersect (Callon, 1984). The question is how legal reasoning can be

reoriented to reflect the entanglements of technology, science, and governance in a way that is more responsive to planetary crises. One potential way forward is to view law as a flexible, iterative process that continuously integrates local and global knowledge, scientific advancements, and emerging social movements.

Coming back to the percepts developed in the paper, here, points of contact emerge between rationalities, making worlds translational despite the persisiting neutral mechanics of legal reasoning: damage, causal links, harmful acts, evidence, environmental impact – all traditional legal concepts whose neutrality allows them to compose across ontological divides. These two percepts indicates that the future of law, then, is not just about who is responsible for harm, but about how do we build new systems of accountability, resilience, and care in an era of profound transformation (Muir-Watt, 2023). New legal potentialities are now emerging in reaction to the excesses perpetuated by disempowered actors and institutions. These legalities have the potential to land, to anchor itself in reflections inviting us to rethink human/non-human, North/South, dominant/dominated relationships, etc. These interactions between modes of existence make this new law and its nodes, which can be seen as rhizomatics vector of transformation – each vector make sense very differently of what transformation should entail. But is this not asking too much of law? And, where should we land? Rhizomatic thought—a product of boundary shifts between worlds—is not merely an academic endeavor, a matter of knowledge, but a political act, a form of intervention. To make this thought heard—and in doing so, transform the ways humans inhabit the world—law and lawyering needs to navigate and compose with the political. It is law—not phislosophy—that is tasked with rendering into *legal form* the "modes of veridiction" a society produces about itself (Foucault, 1994). It seems like the Anthropocene and the different turns and shift that comes with it is generating a new political truth—lawyers must now find ways to translate these truths into legalities. Rhizomatic thinking and learning coud be a first attempt to do so.

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Mycelium Law

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ABSTRACT

This text imagines the law as a rhizome and performs the law as rhizome by combining strands of thought that connect yet also allow spaces of disconnection. The text draws parallels between the law on the one hand, and the mycelium network on the other, focusing on the multiplicity of extensions that open a space of innumerable encounters. The analysis revolves around the Australian case *Munkara v Santos* where the movements of aboriginal spirits on land and underwater are taken into consideration. Through a critique of the decision, I argue that law can and is potentially mycelial, both textually and materially. This, however, is not without its problems. The law often forgets the need to encounter others in their own language, and to place the wider mycelial interests at the core of its actions.

KEYWORDS

rhizome, mycelium, atmospheres, aboriginal, language

1.

In preparing for the hearing of their court case in *Munkara v Santos*,[1] Mr Simon Munkara, a tribe elder, along with twelve other Tiwi islanders and the help of the Environmental Defenders Office, an NGO working with the law to protect the natural environment, produced a map showing how their cultural interests would be affected by the proposed Santos' Barossa Gas Pipeline. Aboriginal heritage sites were alleged to be present all along the northern, western, and southern coastlines of the Tiwi Islands, including areas used for food collection, sacred sites, camping sites, and a dreaming site. The proposed pipeline was to be installed near the Tiwi Islands on the north coast of Australia.

Amongst other things, the map showed that the pipeline would cut across the songline of a tribe spirit, Jirakupai (the Crocodile Man), a foundational creation story in aboriginal cosmogony; it also showed that the location of the pipeline affected Mother Ampiji, the rainbow serpent

[1] *Munkara v Santos NA Barossa Pty Ltd (No 3)* [2024] FCA 9 https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2024/2024fca0009

caretaker of the Tiwi Islands. The lines and spots on the map were mostly hand-drawn, pointing to both geological elements that functioned as the spirits' seats, as well as the spirits' songlines crossing land and sea country.

Although the claim was unsuccessful, *Munkara v Santos* is one of a series of cases that continues the opening of Australian jurisprudence to an aboriginal country-imbued understanding of the land. The location of spirits and the songlines of these important tribal divinities were considered by the Court, and this is indeed significant. However, the proceedings were conducted with such a forensic and analytical attention to the particular historical and spiritual context that, while on the one hand and in the legal parlance, the Court decision feels responsive and responsible (meeting the expectations of what western court proceedings should be like), it is fundamentally misaligned to what the map was trying to do.

2.

What is a law that speaks the language of spirits? What is a law that moves away from a textuality of statements and into a non-Western, non-rational sensoriality of bodies? What is a law that thinks of itself as life, and not as fear? And how would such a law express itself?

Surprisingly, such a law might not be so different from the law that we understand as law and in this jurisdiction understand as law. We inhabit a law that appears textually solid and commanding while allowing for manoeuvring ambiguity. We embody a law that cages us into lines of individual freedom, while pushing us from within, making us dream of its transformative potential. We hear a law that feels like our body yet is a slightly foreign body that speaks in the voice of parental control. We put 'likes' and 'hearts' to a law that appeals to people's sense of immediate justice, offering the illusion (sometimes useful) of being able to influence the law.

What I am trying to say is this: the law is already elastic, malleable, plastic. The law is already, by definition, rhizomatic. Namely, mycelial, spread out, complex, multiple, sensorially connected, embodied, carrier of matter and affects, producer of atmospheres, always wedded to the space and the materiality whence it emerges.

The law as we understand it has demonstrated its ability to respect other languages: the recognition of rights for nonhumans in the form of

geographical elements is a good albeit hesitant example of that. The kind of law we want might already be here. But we need to stretch it in the right direction. We need to make the law plural, allow it to speak other languages, write itself in lines beyond textuality, and dive into encounters that will alter it. Maybe the law needs to finally understand itself as the rhizome that it is. With all the risks that go with it.

3.

Rhizomatic thought is perhaps Deleuze and Guattari's best documented and most commented way of discrediting the omnipotence of binary thinking.[2] In their work *A Thousand Plateaus*, they present three kinds of thought. The first one is *arborescent*, where root-tree is the one-becoming-two, the absolute binarism: "Binary logic is the spiritual reality of the root-tree", for even if arborescent thought has moved away from simple bifurcation, it remains wedded to it by structuring itself around the taproot and the supposed multiplicity that takes place around it. "We're tired of trees. We should stop believing in trees, roots, and radicles. They've made us suffer too much." (Deleuze and Guattari 1987, 15)

The structural solidity of arborescent thought is in the core of our society of control: "Arborescent systems are hierarchical systems with centers of significance and subjectification, central automata like organized memories. In the corresponding models, an element only receives information from a higher unit, and only receives a subjective affection along preestablished paths." (Deleuze and Guattari 1987, 16) To be subjected to this centralisation, indeed to become a subject amidst and through this, is comforting, it feels safe, it flows along what others think and do. It gives rise to a libidinous belonging: we are in this because we (think and to a large extent we *do*) desire it. Or at least we desire not to be without. Arborescent thought is the basis of *atmospheric* complicity, as I write later, namely law's emergence as sensorial and affective enclosure, where bodies feed their own need to

[2] One of the first scholars to apply the rhizomatic to legal studies is Merima Bruncevic. See 'We Need to Talk About the Cultural Commons: Some Musings on Rhizomatic Jurisprudence and Access to Art', Naveiñ Reet: Nordic *Journal of Law and Social Research* (NNJLSR) No.6 2015, pp. 115-130

belong, even if the atmosphere is noxious, exclusionary, oppressive, asphyxiating (Philippopoulos-Mihalopoulos 2015).

The second way is that of *fascicular* thought, where the tip of the root is cut off and the only way to continue is via bifurcation. Fascicular thought is interesting because it *appears* radical, indeed rhizomatic, but in fact it simply places the practices of binary distinction and seamless circularity in the service of the integrity of the subject. Indeed, we have the ultimate dialectics: "the fascicular system does not really break with dualism, with the complementarity between a subject and an object, a natural reality and a spiritual reality: unity is consistently thwarted and obstructed in the object, while a new type of unity triumphs in the subject." (Deleuze and Guattari 1987, 6) This unity is hovering above any possible multiplicity. It is the paternal embrace to which all bifurcations return, the ultimate circularity, the core nest of the juridical illusion. This is the way society is supposed to think of the law: a rationality that generates an umbrella of stability, constancy, minimised risk (to the ones meriting it) and maximised fear (to the ones deserving it). This particular legal atmosphere is often a necessary illusion: we need to think of the law as a guarantor of safety and certainty. We need to believe that everything about the law is intentional. And through this belief, the legal atmosphere of control is maintained and reinforced. Indeed, the *desire* to be part of the atmosphere is the same desire that maintains it.

4.

The *rhizomatic* comes last, but we know right from the start that this was where we were being steered. The goal is to remove the phenomenological correspondence between subject and object (something Deleuze and Guattari had already started in their 1987 book on Kafka), to subtract oneself from the idea of uniqueness, and to keep on making everything plural. But they warn us: "it is not enough to say, 'Long live the multiple,' difficult as it is to raise that cry… The multiple must be made, not by always adding a higher dimension, but rather in the simplest of ways, by dint of sobriety, with the number of dimensions one already has available— always *n-1* (the only way the one belongs to the multiple: always subtracted). Subtract the unique from the multiplicity to be constituted; write in *n-1* dimensions.

A system of this kind could be called a rhizome." (Deleuze and Guattari 1987, 6)

How to make the multiple? First of all, *make* we must. Multiplicity is not a state of nature, an a priori. The multiple needs to be made. Making is a process of infinite connectivity: "any point of a rhizome can be connected to anything other, and must be." (Deleuze and Guattari 1987, 7). Making is weaving, crossing, diverting, losing, re-encountering.

Second, making means being present in the weaving, but also removing oneself from it. Making is surrendering to the matter, but also seeing the matter changing in one's hands. Making is clay and god, breath and death. Making the law as a rhizome is fleshing out its multiplicity, drawing lines and boundaries, linking up everything to everything. To do this, one becomes the law: omnipresent, omnipotent yet subtracted and therefore absolutely removed. This is not the potency of the one but of the connection. One is not there, yet making remains.

Third, and connected to the above, in 'sobriety'. Yes, not inebriated with power, but coolheaded; not heated with partisanism but tiptoeing on the line crossing the skies, umbrella in hand, abyss below. Yes, sober; but this is a drunk sobriety, the sobriety of the festival (Deleuze 1995), the n^{th} power that carries on *ad infinitum* but, importantly, stops itself from colonising the world. One's imperialistic instinct is subtracted: *n-1*. This is a drunkenness that comes from within, indeed an ancestral, planetary "drunkenness as a triumphant irruption of the plant in us" (Deleuze and Guattari 1987, 11). The plant spreads and takes, over but also positions itself in *relation*.

Let's call this mycelium.

5.

Mycelium is the rhizome par excellence (see also Ingold 2000). Although a rhizome is not necessarily a plant (Strathern 2017) and can be animals, humans, inanimate, and immaterial bodies, the mycelium seems to cross these boundaries by including all of them in its function. Simply put, without mycelium, there would be no life on the planet. Other plants, animals, humans, and inanimate bodies all converge towards its emergence (Tsing 2015). Merlin Sheldrake (2020, 52) describes it in this passage of inebriated textual sobriety: "sprawling, interlaced webs strung through the

soil, through sulphurous sediments hundreds of meters below the surface of the ocean, along coral reefs, through plant and animal bodies both alive and dead, in rubbish dumps, carpets, floorboards, old books in libraries, specks of house dust, and in canvases of old master paintings hanging in museums."

Mycelium is the absolute horizontality stretching across the globe. It spreads through links and extensions, it has no centre, no predefined direction, no linearity except for that of the space right underneath the surface, closely following the cracks of the terrain, a meshed blanket underneath our feet. It is "better thought of not as a thing but as a process: an exploratory, irregular tendency" (Sheldrake 2020, 12).

Mycelium 'makes' itself by becoming other. In order to spread (and to survive), it needs to multiply, to become plural. "One tip becomes two, becomes four, becomes eight—yet all remain connected in one mycelial network." (Sheldrake 2020, 42) But is this one body simply bifurcating, or are these multiple multiplicities? Sheldrake again: "I'm forced to admit that it is somehow, improbably, *both*." Mycelium is neither subject nor object. There can be no phenomenologically constructed distance between its roots, no space for intentionality to exercise itself. We are in a thick DeleuzoGuattarian realm. Self and other in a fold: "Self can shade off into otherness gradually." (Sheldrake 2020, 42) In turn, otherness becomes one's own. And the self fades into subtraction: *n-1*.

Mycelium becomes its own plural explosion by constantly encountering others. It is not easy, however, to find relevance and compatibility. Mycelium keeps on bifurcating ad infinitum, it works its way round obstacles or bodies that do not offer a possibility of a meaningful encounter, and it even comes across its own body (self? other?) during its multiple twists and turns. The greatest challenge is that "of finding one another amid the chemical babble in the soil where countless other roots, fungi, and microbes course and engage." (Sheldrake 2020, 42) Yet, it perseveres and indeed succeeds: some fungi have tens of thousands of mating types, and mushrooms, truffles, and other emergences are the product of sex amongst these mycelian networks. Mycelian polyamory, the blanket of compatibility that connects thousands of types, means that the network becomes stronger the more interwoven it is.

Mycelium is the opposite of disciplinary closure.

6.

Mycelium law works first of all on the level of metaphor: it is the juridical dreamscape of a law that can couple with the world in generative ways. A law that spreads everywhere, underlines everything, writes itself on the surface of the earth while nourishing everyone around it. A mycelial law that serves justice by being both everywhere and subtracted, hidden underneath layers of materiality.

The metaphorical, however, is also material. Quoting the Stoic Chrysippus, Deleuze (2004, 11) writes: "If you say something, it passes through your lips: so, if you say 'chariot', a chariot passes through your lips." I have previously argued (2016) that metaphors are material things, fleshy emergences of the way the world evolves, affecting mind, body, and space. Here too, I would like to think of the mycelial metaphor as a sliding movement between language and materiality, from lips to chariot and back as it were. The term 'sliding' comes again from Deleuze: "by sliding, one passes to the other side, since the other side is nothing but the opposite direction [*sens* in French]" (2004, 108). This meaning-producing sliding does not take place on a binary but ensconced in a *fold*, namely that soft rupture in the rhizome that gives form to difference while reinstating identity.

Thus, mycelium law is a material metaphor that slides between the two slopes of the linguistic-material fold. Mycelium law is the laws *of* the mycelium, its behavioural norms, its ethics (in the Spinozan sense of how it positions itself in relation to other bodies), and its understanding of identity in that fragmented, open, self-effacing way. But it is also law *as* mycelium, a law of the ground and the underground, a humic emergence that comes from and returns to the soil, a planetary expansion connected to the chthonic.

By now, we know well that law is not *just* text. It is that too. But law's textuality must be seen as a writing movement of bodies, an expansion of text into the non-linguistic, indeed the linguistic turn on its head. Everything is written in code, coiled up scrawling, sentences squeezed like mycelium writing, a teaspoon of which, if laid end to end, "it could stretch anywhere from a hundred meters to ten kilometers." (Sheldrake 2020, 52). But it is as text that the law often forgets to subtract itself and insists on being

written large across the surface of the earth: an anthropocenic law that takes over and determines the texture of the planetary crust.

Law is matter, bodies, space, distance, ideas, immateriality. Law and matter are tautologous. Matter and law move in unison, altering the world while being altered themselves (*** 2015).

The law is nothing but a lawscaping movement. The lawscape is nothing but an admission, finally, that law is carried in the space of the bodies that make up the world. Mycelium law is nothing but an admission, finally, that law is telluric, carried in the planetary body of the Earth, no longer human, no longer even merely intrahuman. Mycelium law is law bloated with water and nutrients, carrying matter and affects through encounters that change the law itself.

7.

The map created by the Tiwi islanders unfolds for miles across earth and water. It covers an expanse of movement that trembles along the map, shifting the way the geography of humans and nonhumans is formed. The map is not merely an exercise in documenting. No map is ever a faithful reproduction of an objective reality – what is that anyway? Even Borges's 1:1 map in his short parable 'Of Exactitude in Science' (1975) is not a reproduction but a different ontological plane. So the map distorts as well as forms, misinforms as well as educates. Just like any map, the Tiwi islanders' map resemiologises, mixes, alters, adds, and subtracts. But beyond that, the map ultimately changes the lay of the land. It does not hover above the world nor project itself on it: rather, "[the map] forms a rhizome with the world" (Deleuze and Guattari 1987, 11).

Here's our rhizome: the north coast of Australia, Tiwi islands, the ocean, the water that pools, the underwater lake; national and International Law of the Sea, Property Law, Cultural Heritage Law, Environmental Law; Australian jurisdiction; and of course, Indigenous Law: songlines, dreaming, country of land and country of water, spirits roaming the globe. Lines everywhere, crossing, erasing, reinforcing, escaping each other. Lines of connection, lines of flight. This is no organisation, no institution, and no structure, because "unlike a structure, which is defined by a set of points and positions, with binary relations between the points and biunivocal

relationships between the positions, the rhizome is made only of lines." (Deleuze and Guattari 1987, 21)

But this multiplicity needs to be *made*. There are many ways in which the making can take place in law: through the introduction of legal pluralist traditions in court considerations, or taking seriously such liberal concepts as Tolerance and Equality, Diversity, and Inclusion, or interpreting broadly and contextually standard human rights protection, or perhaps this most pivotal of acknowledgments (one can always hope) that law is not just text but embodiment, emplacement, and materialisation of movement and pause, of living and dying, of affect and history. Whatever the route, the multiplicity has to be made.

Hence, the map that was prepared for and presented to the Australian Federal Court: on the map, the lines of the Crocodile Man's songline and the Mother Ampiji dreaming are depicted as intersecting with the proposed pipeline. It is worth quoting from the case:

> The first aspect is one founded on ancient oral tradition, involving song lines told by certain clans of the Tiwi Islanders both in words and in their songs, dances and ceremonies over many generations. Reduced to its briefest expression, the allegation is that:
>
> (1) There are one or more rainbow serpents named Ampiji, one of which resides in Lake Mungatuwu, a freshwater lake in the southwest of Bathurst Island. Ampiji is a caretaker of the land and the sea. She patrols the coastline around the Tiwi Islands and also travels into the deep sea and thus into the vicinity of the pipeline. The risk arising from the activity was alleged to include a fear that the construction and presence of the pipeline would disturb Ampiji and that she may cause calamities, such as cyclones or illness that would harm (at least) the people of certain clans. The applicants allege that the pipeline will thereby damage the spiritual connection of the Jikilaruwu, Munupi and Malawu people to areas of sea country through which the pipeline will pass.
>
> (2) The Crocodile Man song line is connected with a place in the sea in the vicinity of the pipeline. The applicants allege there is a risk that the activity will disturb the Crocodile Man in his travels and thereby damage the spiritual connection of the Jikilaruwu people to areas of sea country through which the pipeline will pass. (para 14)

The applicants continue by stating that Mother Ampiji's residence is located in a submerged freshwater lake. Although at some distance from the proposed pipeline route, both the residence and Ampiji's patrolling around the coast, the islands, and the wider sea would be affected by the proposed pipeline. The applicants state that:

> In ancient times when the land now forming the sea bed was subaerially exposed, there existed a very large and deep freshwater lake in the area situated about 10km from what is now the western most point of Bathurst Island at or around Cape Fourcroy. At the mouth of the lake, the applicants allege, was an embayment (a recess in the landscape). (para 15)

> The Mother Ampiji travels around the sea, including around the Tiwi Islands. The applicants assert a spiritual belief that the pipeline will pass between the Ancient Lake and the Tiwi Islands, that it will "disconnect" the Jikilaruwu, Munupi and Malawu clans from the Ampiji who lives in the Ancient Lake and thereby damage the spiritual connection of the Jikilaruwu, Munupi and Malawu people to the areas of their sea country through which the pipeline will pass. (para 17)

8.

The Court senses a risk: the map is overcoding the territory. The rhizome is under threat.

This rhizome has been gingerly forming during all these decades since the 1992 *Mabo v Queensland* case,[3] and even before, involving colonial and aboriginal law, an angular, ruptured, conflicting rhizome, not a smooth spread but a constant jumping over hurdles, a mycelium that fights for its whole body and not just for its tip, a world that observes and learns: this rhizome, if I was to interpret Justice Charlesworth's thinking, is at risk because of this very map.

In its attempt, however, to salvage the rhizome, the Court ends up overcoding it.

[3] Mabo v Queensland (No 2) [1992] HCA 23 at https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1992/23.html

The Court, correctly in terms of legal procedure, questions the integrity of the map, both in terms of its process of production, which included specialists and significantly the Environmental Defenders Office in addition to the tribal members concerned; and the true representative value of the map, since "a significant degree of divergence" was noted amongst the three tribes involved in terms of the spirits' seats and travels, and the potential impact of the pipeline on them ("there were conflicting accounts given by Jikilaruwu clan members (including senior members of the same family group) about the content of song lines and the impact of the pipeline upon them" at para 70).

The Court knows that the map is not expected to be a definitive representation. As Justice Charlesworth states, "The Tiwi Land Council has been instrumental in recording and registering sacred sites … resulting in a map depicting many sacred sites on the land including around the coast. I accept that is an ongoing process." (para 69). But the Court is afraid that the process so far has not been 'fair'. To explore this concern, the Court commissioned reports from a great deal of experts in various fields (anthropology, archaeology, earth sciences, geophysics, and marine science) and as a result, the judgment is indeed both well-informed and imbued with an appearance of strong sense of care towards local interests.

But the overcoding has already taken place. Not the one that perhaps the Court was afraid, but the one emanating from the assumed authority of the Court.

9.

In its attempt to protect the rhizome, the Court rejects the map, and with it, the Tiwi islanders' claim. There are two issues here: first, that as Deleuze and Guattari write, "[the map] is itself a part of the rhizome. The map is open and connectable in all of its dimensions; it is detachable, reversible, susceptible to constant modification." (Deleuze and Guattari 1987, 12) The map presented to the Court is not the 1:1 map consumed by the delusion of real representation. A map is part of the rhizome, a bouquet of hyphae ("fine tubular structures that branch, fuse, and tangle into the anarchic filigree of mycelium" Sheldrake 2020, 12) reaching out to connect with other hyphae: it is always an attempt at an encounter. A map is scarred

skin, colonised land, the brutality of the powerful, the ones that take the land away from the others, the ones that they still refuse to encounter: this is *terra nullius*.

And this needs to be understood as such. Not a representation but a rhizomatic emergence that breaks through the crust of the earth, and screams. The Court is (unsurprisingly) using standard mechanisms of a typical Western legal hearing in order to box in the mycelian spread of spirits, their habits and routes, and the way these are being perceived, communicated, and lived by the various members of the tribes. And while the Court includes these in the legal discourse with what can only be commended as an attempt at understanding the issues, dressed in forensic precision with regards to the movements of the spirits, and an overall sober intent aware of its responsibility as protector of cultural heritage of potentially global significance, there is no effort to accept the multiplicity of beliefs and divergences for what it is: namely a sign of rhizomatic vitality whose effervescence only minimally obscures the fact that these tribes care deeply about the environment and the ecological and cultural balances of the land and the sea, and that by extension the tribes embody a much stronger planetary conscience than the defendant does.

Just to put it in context: the pipeline is pivotal to Santos's plan for an AUS 5.7 billion gas extraction project, expected to generate about 15.2 million tonnes of greenhouse gas emissions – something that the Australasian Centre for Corporate Responsibility has called a "carbon bomb". (Mazengarb 2024). But the overcoding of the rhizome by the Court is precisely along those lines of growth and progress. The law is stretched by the Court in the wrong direction – wrong because it is alien to the rhizome that cannot accommodate that mad verticality of 'progress', that upward graph of human civilisation. We can no longer credibly carry on. To quote Anna Tsing (2015, 24-25), "progress felt great. There was always something better ahead…I hardly know how to think of justice without progress. The problem is that progress stopped making sense."

In order, therefore, to push the rhizome towards 'progress', namely the progress signalled by gas extractivism and massive infrastructural works that affect the environment in irreversible ways, the Court fights the spirits with the Western lust for precision. What we end up reading in the judgment is an astonishingly farcical discourse where forensic accuracy of songlines and spirit locations is sought in order to prove (or disprove) the relevant

claims. Naturally, this cannot be established with the degree of certainty the Court needs:

> Beliefs about Ampiji (sometimes spelt Ampitji) among Tiwi Islanders are varied in several respects, particularly on the question of the extent of her travels and the related question as to whether the pipeline would cause her to become disturbed. There are also differing accounts as to whether there is more than one Ampiji, and as to whether there exists a Mother Ampiji." (para 78)

The Court cannot accommodate uncertainty, multiplicity, or vagueness. It cannot make these fit in with the hard metal ruler that law still yields everywhere, measuring distances and propinquities as if they were life. What we have instead is a paternalistic approach to very complex issues that simply cannot be understood through the usual juridical categories of Western law. In many respects, although a huge amount of expert advice (which might indeed be part of the problem) was sought to corroborate the Tiwi islanders' claims in hundreds of pages, the law has progressed little in substance from 1990 when Peter Goodrich was writing about the Haida Indians who supported their claims to their native land through full ceremonial dresses and masks; without any lawyers, but armoured with tellurian mythologies, traditional poems and heroic songs that, for them, demonstrated beyond any doubt their ancestral claim to the land. Unsurprisingly, the court decided that their claims were not legally relevant: it classified them as meaningful but nonsensical in terms of the law. Goodrich suggests that the court refused to compare mythologies, because that would raise questions of the 'self ', of what it is that the court represents.

10.

The second issue, which is related to the above, involves a decisive gesture of pulling down to earth the Court and its law. While the intention of Justice Charlesworth is arguably justified in rejecting the map ('not representative enough'), her pronouncement is *ex cathedra* – the throne usurped by colonial law to determine the lay of the land. This throne is imagined hovering over country, a divinity doused in rococo light, veiled

by titles and texts that are an integral part of the upper echelon of the painting and benevolently looking over the little, what? Struggling rhizomes below? ants and grass? orchids and bees? Yes, all that, and in so doing bestowing its harsh but 'fair' blessings. But can the law ever be above the rhizome? Can anything? Deleuze and Guattari (1987, 9):

> a rhizome or multiplicity never allows itself to be overcoded, never has available a supplementary dimension over and above its number of lines, that is, over and above the multiplicity of numbers attached to those lines. All multiplicities are flat, in the sense that they fill or occupy all of their dimensions: we will therefore speak of a plane of consistency of multiplicities.

In this most pivotal quote of *A Thousand Plateaus*, Deleuze and Guattari present us with their ontological plane, the plane of consistency or *immanence* (the terms are used interchangeably in the book). The plane is a spatialisation of Spinoza's (2000) understanding of "God or Nature", where everything is part of the same substance, and linked to everything else. To put it differently, there is nothing above or beyond the plane. This is all there is: a Nietzschean immanence (2005) where the outside is delegated to the realm of (perhaps necessary, perhaps inevitable) imagination.

In acting the way it did, the Court imagined itself above the plane, away from the rhizome, a god that does not fit in and narcissistically commands attention. A god that is pleased to be remote, veiled, yet omnipotent and omnipresent, a loud presence beaming with its ability to blind. The Court is a different kind of god to the aboriginal gods: while the former hovers overhead, the aboriginal spirits roam the earth and the ocean rhizome-like, inviting others to dream along their perambulations.

Challenging the delusions that feed western rationality yet working with its accepted instruments, the Tiwi islanders map brings god (or nature) into the Court room, extending a line that has already started before Captain Cook, property titles and genocide; but also a line that begins in an underwater lake in the north coast of Australia that may or may not have existed at the time. The Court reaches scintillating heights of juridical parody when it tries to establish whether the spirits could have entered the water in the late Pleistocene period (65,000 to 20,000 years BP).

> The maps used in the cultural mapping processes are problematic in several respects. Critically, they cannot on any reasonable measure be said to correctly represent the pre-inundation landscape in the period to which they relate. At the times to which the maps relate, the Tiwi Islands did not exist as islands at all. Rather, the now-submerged landscape and the land that is now the modern Tiwi Islands formed part of mainland Australia. (paras 1140-1).

In other words, at the time of the spirits' first entering the sea, the Tiwi Islands did not exist. The Tiwi emerged as islands (namely, were eventually encircled by water) only when the sea level rose. At the time of Crocodile Man's songline, the sea level was 120 metres lower than today.

> On a true depiction of the ancient landscape, there would be no Tiwi Islands, there would be a singular mainland with a coastline far north of where it is today. I am satisfied that none of that was explained to the Tiwi Islanders. (para 1142)

Why did these have to be explained? Why would a geologist need to explain to the tribe whether their own divinities could enter the water at the time or not? Pressing these beliefs in the confines of juridical necessities is a way of belittling their actual importance. Because, above all, the time of the map is not historical time. The map includes rhizomatic lines of the temporality and spatiality of the spirits, which is nothing else than the way the community connects to and at the same time protects its environment. These lines, like all mycelian lines, would no doubt be able to carry on, circumventing even the proposed pipeline, for a hyphae line never loses its direction even when faced with an obstacle (Sheldrake 2020). It would simply follow the line that its own body is forming while spreading.

The time, space, and language of spirits is not that of the law. But it is the responsibility of the law to understand these *in their own terms*, and not through the forensic tools of the law. The law needs to encounter otherness, mate with it, and allow mushrooms of intoxicating fragrance to pop. The law needs to get drunk.

11.

The Belgian Pavilion at the 18th Venice Architecture Biennale 2023 was a mycelial rhizomatic house. The architectural firm Bento and the artist/curator Vinciane Despret built a house of fungi, a symbiotic world-making where mushrooms are the construction material, the energy source, the food, but also the roommates of the humans. In this new era of the Mycelocene, the project *In Vivo* poses the basic question: "Who is hosting whom?" Rather than simply ignoring or utilising the mycelium as a resource, humans are imagined living *with* mycelium.

Accompanying the pavilion is an edited volume of speculative non-fiction coming from the future and commenting on some of humanity's grave mistakes as well as achievements (Despret *et al*. 2023). This future anterior, looking back onto itself and changing the ontology of the present, is a gaze that the Australian Federal Court sorely lacks and desperately needs. In a text from 2031, the authors state that "we are all symbionts, which is to say that the very notion of individuality, which has long been one of the central notions of how we perceive our existence and that of others, must be revised." (Despret *et al*. 2023, 233) And symbionts they are when, in 2042, they write about the lyrical communication of the mycelium (the "mycopoetic", 265) that "has no singular, everything is in the plural" (266), studied by "radical geolinguistics" which "occurs when speakers primarily use roots to exchange information" (211) and "therolinguistics" which understands that "living beings are not solely mobilized by motives of survival or reproduction but by creative impulses to invent aesthetic forms and expressive contents – i.e. literatures." (212).

The law can learn from it. Rather than fixating on a past in order to unearth causalities that will satisfy that small part of the law that responds to this, the Court should have also been looking into a future where living *with* nonhumans is the only way to survive. In any case, speculative narrative is not different from legal discourse: it imagines a reality and commands it into actuality, which sometimes happens and sometimes does not. As a sheet translated from mycopoetics states, "the mycelium, because it never stops exploring, investigating, is the embodiment of speculation." (280). In the above sentence, replace 'mycelium' with 'law' and you have law's horizon as the speculation of future justice.

But law's language is not the only one. As Deleuze and Guattari remind us, "there is no language in itself, nor are there any linguistic universals, only a throng of dialects, patois, slangs, and specialized languages." (1987, 7).

The law has already started recognising the existence of other languages. It is time it spoke them.

12.

Allow me to go back to the earlier question: can the Court truly be outside? Indeed, is there an outside to the rhizome?[4]

"The wisdom of the plants: even when they have roots, there is always an outside where they form a rhizome with something else—with the wind, an animal, human beings." (Deleuze and Guattari 1987, 11). If there is an outside, it is part of the rhizome. If there is an outside, the mycelium will reach it. For any outside is virtual.

Deleuze's understanding of virtual is instructive: it is as real as the actual. It is just that the virtual needs to be actualised. A rhizome positions itself amongst other bodies from which it draws its energy, nutrients, information, and so on. At the same time as following its conative urge to expand, grow, indeed survive, a plant also takes care of other plants. This is the discovery behind Suzanne Simard's *Finding the Mother Tree* (2021), namely, the forest that allows the whole rhizomatic spread to protect itself and its elements through the transfer of nutrients, affects, and information. In the case of fire, for example, the mycelium underpinning the forest transmits messages that alert the plants on the other end of the forest not yet affected by the fire, to close up, pump up moisture, and generally minimise the impact of the impending fire.

The rhizome is traversed by lines, linking and separating the various bodies. These lines are ethics drawn on the basis of the spatial distribution of bodies. This does not mean, however, that the further a body finds itself from another body, the less ethically involving the situation is. The outside is actualisable and everything is, potentially or indeed virtually, part of

[4] For an answer to this related to IP law and commons, see Merima Bruncevic, *Law, Art and the Commons* (London: Routledge, 2018)

the rhizome. This is the core of Spinozan ethics: an individual or collective body can only flourish when all other bodies around also flourish. Naturally, the ones that are incompatible, say a pipeline across the ocean bed that stratifies space in ways that make the rhizome unable to carry on, do not need to flourish for the rhizome to flourish. So there is an ethical rhizomatic spread that, like a forest, takes care of the connections, linking and separating, continuing and rupturing.

The plane of consistency, however, is not a flat, uniform space. It is a maelstrom of striation and smoothness, namely institutional organisation/colonisation/oppression on the one hand, and nomads fleeting about on the other, occupying new smooth spaces of potential future striation. It is also filled with ruptures – as Deleuze and Guattari instruct, "always follow the rhizome by rupture" (1987, 11). A rhizome is indeed a continuum of ruptures. "There is a rupture in the rhizome whenever segmentary lines explode into a line of flight, but the line of flight is part of the rhizome." (1987, 9). Ruptures are identity tools, crevasses of otherness that remain, however, part of the body: "These lines always tie back to one another." (1987, 9). Ruptures draw the rhizome away from noxious encounters, opening up lines of flight, escape routes, and creative leakages. But even then, things are risky: "one can never posit a dualism or a dichotomy, even in the rudimentary form of the good and the bad. You may make a rupture, draw a line of flight, yet there is still a danger that you will reencounter organizations that restratify everything." (1987, 9).

Stratification is the way the plane of consistency is taken over. It will never, of course, be completely stratified. There are always spaces of overflow, excess, and outbursts of the outside within. But what is important to remember is that the plane is not flat, like many new materialist and vitalist theories posit. It is *tilted*. Stronger bodies weigh more, and their presence and movement determine the way other, weaker bodies, can move: they determine the lawscape. But stronger bodies have a responsibility to act in a way that takes care of other bodies. The law, through the Federal Court in Australia, seems to be taking this responsibility seriously but ends up overtaking the plane of consistency by completely stratifying it with unproven causalities and irrelevant questions of harm. And just like rhizome can be co-opted by any kind of theory that thinks of itself as radical and anti-institutional with right-wing populism as the classic example (or as Van Den Meerssche and Gordon write, "The rhizome has rooted in new

rationalities of rule, the swarm nested in the sovereign"[5]), in the same way the plane of consistency can progressively be stratified to such an extent that lines of flight become harder and rarer.

13.

When coupled with desire, this stratification can become atmospheric. The notion of atmospheres, as mentioned earlier, is linked to enclosures and their conditioning. The term comes from architecture, but it is now widely used across disciplines. In my work, I have elaborated on legal atmospherics as a critique of complicity towards situations that encourage the law to remain potent yet withdrawn (2015). To put it differently, in the name of security, economic growth, or national sovereignty (amongst other things), state law can turn to an atmospheric enclosure where the only option is the one offered by this very law. Perhaps the allure of atmospheres, however, is that they do not feel oppressive. Rather, they are engineered to feel open, free, indeed as deterritorialised as smooth space.

This is because the participating bodies *desire* the maintenance of the atmosphere, even though the latter might be exclusionary, discriminatory, oppressive, and ultimately controlling. Desire guides affects in predetermined ways (Lyotard 1993). Desire of stronger, better placed bodies (corporations, populist governments, plutocrats, but also your friendly influencer) and creates the conditions for law to evolve in ways that can no longer be controlled even by the legal system itself. This means that the rhizomatic encounters that law undergoes with other bodies are not always positive: in fact, these encounters become so complex and so deeply entwined, that it is increasingly harder to separate legality from politics, corruption, personal interests, or even social media impact (*** 2023).

This rhizomatic complexity is a risk for standard conceived notions of identity (e.g., what is law, what is politics), but, like any rhizome, it allows for openings that might not have occurred otherwise. Rhizome is change.

[5] "Perspectives and postures often associated with heterodoxy or critique (multiplicity, decentralisation, bottom-up adaptation, disruption or experimentation) are appropriated, mediated and re-signified in emerging practices of global governance as well as in–awkwardly proximate–modes of radical re-imagination." (Van Den Meerssche and Gordon 2022) See also Eyal Weizman 2006 on how the Israeli army has appropriated the rhizome; and Elizabeth Povinelli's 2021 critique of entanglement.

"The tree imposes the verb 'to be,'" but the fabric of the rhizome is the conjunction, "and…and... and..." (Deleuze and Guattari 1987, 25). From arborial being of fixed identity to rhizomatic becoming of flow. So risks that come from rhizomatic becoming can also be seen as opportunities. To open up the law to spirits, other languages, movements that defied colonial history, mycelian dreams of linking up to songlines into the deep sea: these are things that destabilise the law the way we know it, and at least some of us would welcome that.

In the same way, however, law's becoming is not unproblematic. It can be positive, in that it moves in a direction of planetary ethical positioning. Or towards an instrumentalisation and co-optation of other languages, nonhumans, and immaterial bodies that become cogs in the legal machine of continuous stratification.

14.

Draw lines across the plane. Let them rupture, let them mend. Let them reveal the real as it is: real as virtual and real as actual. Grow together with future possibilities, take risks when encountering, open up to a polyamorous law of admixture and conjunction. But also: set limits from within the body of the law. Flirt with all virtualities, become *and and and*, feel the inebriation of the multiple, but also stop when you must. In *Vibrant Matter*, Jane Bennett (2009) urges us to move away from noxious assemblages. Withdrawal is an ethical move that points to lines drawn, and territories beyond these lines that should not be actualised. These are mycelian ethics: expand and flourish, but also stop yourself from noxious assemblages and narcissistic, all-consuming urges.

But when is a mycelian encounter part of an atmospherics of oppression, and when an opportunity for evolution? This is perhaps the hardest question to pose in rhizomatic thought. When is good good and good bad? Spinozan ethics come to the rescue, but only post-facto. And this is because we always start in the middle. "A rhizome … is always in the middle, between things, interbeing, intermezzo." (Deleuze and Guattari 1987, 25). Decisions, actions, movements float in that high velocity plane where all virtualities converge, a cacophony of options, a heavenly choir of alignments. "The middle is by no means an average; on the contrary,

it is where things pick up speed… a transversal movement that sweeps one and the other away, a stream without beginning or end that undermines its banks and picks up speed in the middle." (25) There is no moral compass in the middle, no morality blanket that protects us from the outer edges, no preconceived ideas of what must be done. The middle is a dizzying space, a subsoil of mad becoming: "a horizonless external gut—digestion and salvage everywhere—flocks of bacteria surfing on waves of electrical charge—chemical weather systems—subterranean highways—slimy infective embrace—seething intimate contact on all sides." (Sheldrake 2020, 27).

With every judgment, every statute, and every policy instrument, the law hits the middle and runs. Its temporality and compatibility are often decided by other systems, with the result that desire is directed in ways that are alien to the law. Thus, to belong, to take sides, to be part of an atmosphere, to be against things, to voice and to act on: these are all legitimate desires that both ride the transformative potential of the law *and* risk turning law into an aesthetic exercise serving only the interests of 'progress'.

15.

By now, all law is mycelial.

It spreads, explores, and investigates. It gets it right, it gets it wrong. Its cardinal problem, however, is when it forgets to keep on encountering others, to try and speak their languages, to resist the pressure atmospherics of appearance. It gets it especially wrong when it forgets that it needs to speak a language of care towards the planet.

Mycelium law is simply law that is grounded. Or, to recall Deleuze and Guattari (1987, 25) "the rhizome is alliance, uniquely alliance." Without alliance, there is no real.

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Rhizomatic Networks in Legal Transplants: Interconnected Interpretations of Legal Concepts Across Jurisdictions

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ABSTRACT

This article proposes a rhizomatic model of legal concept evolution, highlighting how language, cognition, culture, and legal frameworks interact to shape meaning in transplanted concepts across jurisdictions.

KEYWORDS

legal transplants, rhizomatic networks, cultural models, cognitive models, language

I. Introduction

The present study addresses a long-standing problem in comparative law: how legal concepts change meaning as they move across jurisdictions. Traditional models of legal transplants often overlook the complex interplay of linguistic, cognitive, cultural, and legal factors that shape the final content of travelling legal concepts. This article proposes a rhizomatic approach to capture the multidirectional interactions among these factors that influence the evolving image of post-transplantation concepts. It also outlines the structure of this multidimensional framework.

The rhizomatic theory proposed by Gilles Deleuze and Félix Guattari[1] has been applied across various disciplines to explain complex, non-hierarchical, and interconnected systems. It has been used not only in philosophy but also in cultural studies[2] and organizational theory[3], among others, to illustrate how ideas, structures, and practices evolve through non-linear

[1] Gilles Deleuze and Félix Guattari (1987).

[2] Stephen B. Crofts Wiley and J. Macgregor Wise (2019: 75-97).

[3] Robert Chia (1999: 209-227); Shih-wei Hsu (2022: 101-232); Scott Lawley (2005: 36-49).

pathways. The theory's applications may also extend to the field of law, particularly in comparative law, where it provides a compelling framework for understanding the transfer and adaptation of legal concepts across jurisdictions. In this process, legal ideas may be conceptualized as individual rhizomes that, upon crossing jurisdictional boundaries, undergo transformation—sometimes subtle, sometimes profound—to align with local legal traditions, linguistic structures, and cultural expectations. Much like rhizomes in nature, these concepts do not follow a single, predetermined trajectory; instead, they branch out in multiple directions, reshaping legal landscapes and generating new legal ideas as they take root in different jurisdictions.

Let us illustrate this process with an example. In this model, Concept 1, originally associated with Jurisdiction 1, migrates to Jurisdiction 2, where it evolves into Concept 2. The latter may retain some resemblance to Concept 1, but it may also develop characteristics that render it significantly distinct. This transformation occurs as the transplanted concept adapts to a new legal and cultural environment, which may differ substantially from that of its origin. Furthermore, Concept 2—now a post-transplantation concept—may, in turn, influence the legal landscape of Jurisdiction 3, giving rise to Concept 3. As before, this newly emerging concept may bear similarities to Concept 2 but will also be shaped by its own contextual factors. The influence of Jurisdiction 3's legal framework, linguistic conventions, and cultural expectations may further distance Concept 3 not only from Concept 2 but also from its original form, Concept 1.

At this stage, the diffusion of legal ideas may still appear to follow a tree-like structure, with concepts branching out sequentially rather than evolving in a truly rhizomatic manner. A rhizomatic framework, however, entails unpredictability, multidirectional influences, and interconnectivity. If we introduce additional elements into the model, its structure shifts away from a hierarchical pattern and toward a rhizomatic network. To illustrate, our initial model assumes a linear progression: Concept 1 influences Concept 2, which in turn gives rise to Concept 3. However, we cannot assume that Concept 3 is shaped solely by Concept 2; Concept 1 may also exert a direct influence on Concept 3. In this modified model, Concept 3 emerges as a product of both Concept 1 and Concept 2, creating a web of interconnections rather than a simple chain of transmission.

In an even more intricate model, the flow of influence is no longer unidirectional. Concept 3 may also shape the development of Concept 1

and Concept 2, introducing feedback loops that are central to the rhizomatic theory. This reverse impact can take multiple forms: for instance, legal scholarship or judicial decisions concerning Concept 3 may later inform the interpretation and application of Concept 1 and Concept 2 within their original jurisdictions. Such recursive interactions exemplify the dynamic, non-hierarchical nature of rhizomatic networks in legal transplants.

While the above approach provides a valuable framework for explaining the transplantation of legal ideas—how they travel from one jurisdiction to another—we propose an alternative model in which the interconnected elements of a rhizomatic network are not the traveling concepts themselves. Instead, our focus shifts to the various influences that shape how these transplanted ideas are interpreted within different cultural, cognitive, linguistic, and legal contexts. In this perspective, these factors, rather than the concepts alone, form the core of the rhizomatic network. This approach offers a compelling explanation for the divergent interpretations of legal concepts by emphasizing the individual cognitive backgrounds of legal interpreters, cultural considerations, linguistic structures, and, crucially, the legal framework within which a transplanted concept operates. In our model, all these elements coalesce into a dynamic network of interconnected rhizomes that collectively shape the reception and application of transplanted legal ideas.

Our discussion unfolds as follows. First, we examine the transplantation process itself, highlighting the various levels and directions in which it occurs (Section 2). Next, we introduce the proposed rhizomatic network, identifying the key elements that shape the evolution of post-transplantation legal concepts. In this section, we also outline the characteristics of the network that, in our view, justify its classification as rhizomatic in nature (Section 3). We then analyse the individual components of our rhizomatic network in greater detail, beginning with linguistic influences (Section 4), followed by cognitive factors (Section 5), the cultural landscape (Section 6), and finally, the legal framework (Section 7), which serves as the structural foundation shaping transplanted legal concepts. In the final section (Section 8), we synthesize these elements into a cohesive whole, demonstrating their interconnections and interdependencies. We illustrate how the network operates through multidirectional interactions between its components, reinforcing its rhizomatic nature.

To understand how these interconnections operate in practice, the next section turns to the notion of legal transplantation, which provides

the broader framework within which our rhizomatic model will later be situated.

II. Legal transplantation

The transplantation[4], dissemination, or circulation[5] of legal concepts is not a novel phenomenon and has been extensively studied[6]. In its narrower sense, a legal transplant is generally understood as the borrowing or transfer of laws, legal institutions, legal concepts, or legal principles from one jurisdiction to another[7]. The motivations behind such transplants vary[8], as do the factors driving the process[9] and the mechanisms through which it occurs[10]. Additionally, while the specific objects of transplantation may differ[11], this article will collectively refer to them as "legal concepts"[12].

It can be argued that legal transplants have historically been one of the most significant and recurrent sources of legal change in the Western world over the past millennium. The borrowing of legal norms and substantial portions of legal systems is a well-established practice. Legal history is marked by an extensive degree of borrowing, with lawmakers frequently relying on foreign models, often with minimal modifications, rather than crafting entirely new legal frameworks. Few statutes—particularly codes—are entirely original in the sense that they are developed independently without significant reliance on foreign law[13].

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4 The term was first used by Alan Watson (1974). On the appositeness of the term 'legal transplant', see Esin Örücü (2002: 205).

5 The term was suggested by Edward M. Wise (1990: 1).

6 Alan Watson (1993). For subsequent explanations of Watson's view on legal transplants, see William Ewald (1995: 489) and John W. Cairns (2013: 637).

7 Mathias Siems (2022: 288).

8 These may include economic reasons, etc.: see Mathias Siems (2018: 104–105); Holger Spamann (2009: 1813).

9 These factors range from the presence of foreign draftsmen in the legislative process to the educational backgrounds of the authors who cite foreign sources: Holger Spamann (2009: 1823, 1825–1826).

10 These may include citations of foreign court decisions (see Mathias Siems 2018: 104–105) or citations of foreign sources in legal treatises (see Holger Spamann 2009: 1826).

11 For diverse objects of legal transplants see Mathias Siems (2018: 104–105).

12 Legal concepts also include, for example, the idea of having limited companies without the initial share capital, or with a very limited share capital, as well as the so-called corporate opportunities doctrine, thoroughly explored by Martin Gelter and Geneviève Helleringer (2018: 92).

13 Edward M. Wise (1990: 5).

Classic examples of legal transplants include the adoption of concepts developed by German legal scholars into the legislation of numerous jurisdictions worldwide[14]. Another well-documented instance is the influence of German legal codes on Japanese legislation, such as the Japanese Code of Civil Procedure of 1890[15]. Similarly, the reception of the Napoleonic Civil Code in the Duchy of Warsaw in 1808 exemplifies this process[16]. Furthermore, common law principles spread globally following the era of colonization[17]. Perhaps the most renowned case of legal dissemination, extensively examined by Alan Watson, is the gradual transmission of Roman law throughout continental Europe[18].

The transplantation of legal concepts, as described above, follows a horizontal trajectory, involving the movement of legal concepts between jurisdictions at the same level[19]. However, a broader interpretation of "legal transplant" encompasses a wider range of scenarios in which legal concepts traverse legal systems, extending beyond cross-national transfers[20]. Some authors claim that one should also distinguish 'transplants across subject areas' or 'transplants between subject matters within a jurisdiction'[21]. Additionally, in this more expansive sense, transplantation includes the incorporation of legal concepts from EU legislation into the domestic laws of Member States[22], as well as the migration of norms from international law into national legal frameworks[23]. Thus, legal transplantation can be conceptualized as occurring in both horizontal and vertical dimensions. Horizontally, legal concepts travel across different jurisdictions at a comparable level or across subject areas within a jurisdiction. Vertically, they may flow downward from a supranational legal system into individual

[14] A notable example is the concept of *Rechtsgeschäft*. See Nikolaos A. Davrados (2020: 1119, 1129).
[15] Hiroshi Oda (2012: 18).
[16] Józef Szonert (1958: 89).
[17] This, in turn, made for the creation of the so-called mixed jurisdictions, South Africa, Quebec, Malta, the Philippines, Puerto Rico and Louisiana being notable examples (Vernon V. Palmer 2012). See also J.E. Cote (1977: 29).
[18] Alan Watson (1991).
[19] Mathias Siems (2022: 288-289); Mathias Siems (2018: 103-119).
[20] Mathias Siems (2022: 289).
[21] Vanessa Casado-Pérez and Yael R. Lifshitz (2022: 933).
[22] For example, rules on pre-contractual information or unfair contract terms can be regarded as concepts developed at the European level in terms of consumer protection.
[23] For instance, concepts expressed in the United Nations Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1988) have become part of the legislation of the countries that ratified it.

jurisdictions, such as when an EU-level concept is incorporated into Member States' legislation or when international treaty provisions are embedded in domestic law. Conversely, legal transplants may also occur in an upward direction, where legal concepts originating in national jurisdictions are embraced at the supranational level, as seen in instances where domestic legal principles inform EU or international law[24].

As demonstrated, legal transplantation typically involves the formal incorporation of a legal concept into a legislative framework, whether through voluntary adoption or external imposition. However, transplantation can also occur informally, influencing judicial practice or private transactions without being codified in statutory law.

Regardless of the mode of transplantation, once legal concepts move beyond their original boundaries, they begin operating within new legal systems—expressed in different languages and embedded in distinct cultural and cognitive contexts. As a result, their migration often entails reinterpretation and adaptation within the receiving environment. In this process, legal concepts shed their exclusive ties to their place of origin and integrate into a new legal, linguistic, cultural, and cognitive framework. Ultimately, the evolution of transplanted legal concepts is shaped by a complex interplay of legal and extra-legal factors, reflecting not only the characteristics of the adopting legal system but also the broader socio-cultural realities in which they function, as well as the individual cognitive backgrounds of those involved in drafting legislation and interpreting the law. Legal concepts do not merely migrate across jurisdictions; they also traverse cultures, languages, and cognitive perspectives.

This jurisdictional, cultural, cognitive, and linguistic shift has the potential to reshape the essence of a legal concept, leading to its modification or, at the very least, altering perceptions of it before and after transplantation. These influences converge into a dynamic network of interconnected rhizomes that collectively shape the reception and application of transplanted legal ideas. The structure of this network is outlined below.

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[24] For example, the concept of breach of contract found in the United Nations Convention on Contracts for the International Sale of Goods is borrowed from common law: Beata Gessel Kalinowska vel Kalisz (2017: 789, 803).

III. Proposed rhizomatic network

It is reasonable to assume that language plays a crucial role in shaping the final content of a transplanted legal concept. As the primary medium for conveying meaning, language often differs from that in which the concept was originally articulated. While language itself remains a significant factor in shaping the post-transplantation concept (a topic we will return to later in Section IV), other elements also contribute to its ultimate meaning. These factors interact with language, forming a rhizomatic network—a web of interdependent elements that collectively influence the concept's interpretation.

Some of these elements are individual in nature, shaped by the personal perspectives of those engaged in drafting legislation and interpreting the law. Drawing from cognitive linguistics, we refer to these as cognitive models—a term we will define more comprehensively later in this article (Section V). For now, it suffices to note that cognitive models are inherently personal, influenced by individual experiences.

Conversely, other elements within this rhizomatic network are shared mental constructs that reflect the values and beliefs prevalent within a culture or social group. These are known as cultural models. While we will later provide a more detailed definition (Section VI), at this point, it is important to emphasize their collective nature and their intrinsic connection to cognitive models. The relationship between the two is dynamic: cognitive models shape cultural models, just as cultural models influence cognitive models. In fact, we may justifiably argue that the cognitive models of individuals within a given cultural group constitute parts of a broader cultural model. This interdependence exists because individual cognitive models do not develop in isolation—they emerge within a cultural framework that embodies shared values and convictions. Thus, it is not solely cognitive models that influence cultural models; the process is reciprocal. This two-directional exchange aligns with the rhizomatic theory of Deleuze and Guattari. However, within the proposed rhizomatic network, influence is not merely bidirectional but multidirectional, as additional key elements—such as language and legal norms—come into play. These include national legislation, EU law, and international law, all of which contribute to shaping the transplanted legal concept.

With this foundational understanding in place, we now turn to a closer examination of the individual elements within our proposed rhizomatic

network, beginning with language. Language stands at the entry point of this network, as it is through language that transplanted legal ideas are expressed and initially perceived. The next section explores this linguistic dimension in greater depth.

IV. Language

The role of language within the rhizomatic network cannot be overstated. While language is often considered the sole vehicle for expressing legal concepts[25], it is important to recognize that legal ideas can also be conceived without language. Although much of our thinking is facilitated by language, it can be argued that, at least in some cases, thought can occur independently of linguistic structures[26]. While language remains a crucial means of articulating these ideas, we must acknowledge that legal concepts can also be expressed visually—a trend that is gaining traction in some jurisdictions, even if it is not yet universal[27].

Given the diverse mediums through which legal concepts are conveyed, the central role of language as their primary medium is rarely disputed. Considering this crucial function, two additional points must be highlighted. First, language reflects external reality. Second, it can shape how we perceive that reality. When we say language reflects external reality, we mean it acts as a mirror for that reality[28], whether it involves physical objects or abstract concepts. For instance, if certain objects are unknown in a particular culture, the language of that culture typically lacks terms for them. European languages may have words for specific objects that indigenous languages do not[29],

[25] Harold J. Berman (2016: 39); Karen McAuliffe (2016: 200); Jaakko Husa (2022: 43–44). This statement, however, is particularly true in Western culture, where written language is "an inherent constituent of law" and where "the relation between language and law is of a fundamental character". However, this close relationship between law and written language does not necessarily extend to traditional cultures, such as Aboriginal or African cultures; see Jaakko Husa (2015: 46–47).

[26] David Crystal (2011: 13–14).

[27] Jay A. Mitchell (2018: 815); Sandeep Bajaj, Pintu Babu, Lipika Singla (2021: 61–69); Rob Willey, Tammy Tran, Lygie Hinkle, Ashley Matthews (2024); Bingyan Zana, Camilla Baasch Andersen, Lisa Toohey (2023: 4712–4726).

[28] Guy Deutscher (2011: 9 ff).

[29] For example, some indigenous languages may still lack words for objects like 'computer' unless these objects have become part of their cultural reality. Similarly, Western orchestral instruments such as the harpsichord or cello might not have specific terms in indigenous languages that do not have a historical tradition of using them.

and vice versa[30]. The same applies to abstract concepts: if a concept is unfamiliar in a culture, there is usually no corresponding term for it in the language[31].

This principle holds true in law as well. If a legal concept exists within a legal system, there will be terminology to describe it. Conversely, if a concept is unfamiliar, there will be no term available[32].

Recognizing that language reflects the concepts within a culture or legal system, we must also consider whether it shapes our perception of reality. This brings us to the theory of linguistic determinism, which later influenced the development of the Sapir-Whorf hypothesis. This hypothesis is often discussed within the broader framework of linguistic relativity (sometimes associated with the Boas-Jakobson principle[33]). It is generally accepted that while linguistic determinism lacks solid evidence, there are compelling reasons to believe that language influences our perception of reality, though it is not entirely deterministic. In short, the language we speak does not dictate our understanding of the world, but it does shape it. For instance, if a language lacks a specific term for a concept, this does not mean that its speakers are incapable of understanding or recognizing it. If linguistic determinism were absolute, the acquisition of new concepts would be impossible[34]. Yet, we know that speakers can learn and adopt unfamiliar concepts, even when their language initially lacks a corresponding term. This process often leads to the creation of new terms—a phenomenon known as linguistic change, typically driven by language contact[35].

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[30] For example, the djembe, a West African drum, has no direct traditional counterpart in European languages.

[31] For example, some languages have words for emotions that do not have direct equivalents in others. This might suggest that speakers of certain languages experience these emotions in ways that are not explicitly recognized by speakers of languages that lack a corresponding term. However, the absence of a word does not necessarily mean that the emotion itself is unfelt or incomprehensible. The German word 'Schadenfreude' (pleasure derived from another's misfortune) has no direct equivalent in some languages, yet speakers of those languages are still capable of experiencing the emotion. This observation challenges the deterministic view that language fully dictates our perception of reality. It also has important implications for understanding how we grasp foreign legal concepts, even when our native language lacks specific terms for them— a topic we will revisit later in this discussion.

[32] See English terms such as 'equitable mortgage' or 'consideration', which lack direct terminological equivalents in most other European languages. This absence may, in principle, suggest a lack of underlying concepts among speakers of those languages.

[33] As used by Guy Deutscher (2011: 150).

[34] Guy Deutscher (2011: 150 ff).

[35] Anthony P. Grant (2019).

When applying this to legal ideas, the absence of specific terminology in a language often suggests that speakers may initially struggle with the underlying concepts. For instance, legal professionals whose native language is English will readily recognize the concept of 'consideration' in contract law. However, speakers of other languages without a common law background might find it challenging at first. This demonstrates how language influences the perception of legal realities: the lack of terminology typically implies an absence of direct conceptualization. Nevertheless, this does not mean that speakers are incapable of understanding new legal concepts. While language may shape their initial perception, it does not prevent them from grasping the meaning of a concept. They can learn and internalize these ideas, though their mental representation will inevitably be an approximation of the original, influenced by additional factors such as cognitive structures and cultural background, as we will explore further.

Another example illustrates how linguistic differences affect our understanding of legal concepts. Consider the English term 'conveyancing law'. This area of law has no direct equivalent in Polish as a result of which there is not corresponding term to describe it. Does this mean that Polish legal professionals are unable to grasp the concept? Not at all. Initially, they might find it challenging, but once they familiarize themselves with the definition, they can relate it to existing principles of property transfer in Polish law. This demonstrates that while the absence of specific terminology may create initial difficulties, it does not prevent comprehension. However, it does influence how we perceive that body of law. For English speakers, 'conveyancing law' may appear as a well-organized set of rules, complete with its own textbooks and legal framework. In contrast, speakers of other languages might view it as a less distinct collection of legal principles. This underscores how the language we speak structures our understanding of legal concepts, shaping how we categorize and interpret them. Yet, this influence is not deterministic. While language shapes our perception, it does not make understanding foreign legal concepts impossible. Instead, interpretation is influenced by cognitive (Section V) and cultural factors (Section VI), making it more nuanced and, at times, further from the original concept.

V. Cognitive models

Cognitive models are widely recognized constructs, especially in cognitive linguistics[36]. They refer to the internal mental representations individuals use to interpret and make sense of the world[37]. Developed through sensory experiences, these models function as frameworks for organizing knowledge. As noted in the literature, the term "*covers all the stored cognitive representations that belong to a certain field*"[38] and represents "*a cognitive, essentially psychological, view of stored knowledge about a certain domain*"[39]. Cognitive models are inherently individual in nature, as they are shaped by personal experiences and cognitive development.

In the legal realm, cognitive models help explain why legal concepts are understood differently by various individuals. These models refer to the mental schemas that lawmakers, judges, arbitrators, lawyers, legal scholars, and laypeople rely on to interpret and apply the law.

Cognitive models are shaped by a variety of factors, with legal education playing a central role. The training that legal professionals receive significantly influences the formation of these models, establishing foundational legal categories and preferred interpretive approaches. In addition to formal education, professional experience—such as engaging with specific types of cases—further refines cognitive models by reinforcing particular patterns of reasoning and interpretation. As a result, we can identify multiple cognitive models associated with key legal concepts such as ownership, liability, intent, negligence, fairness, and justice. These models shape how both legal professionals and laypeople perceive and apply legal principles, contributing to the diversity of legal interpretation across individual contexts.

As mentioned above, cognitive models play a role in establishing legal categories. Ungerer and Schmid explain that "*In every act of categorization, we are more or less consciously referring to one or several cognitive models that we have stored. Only in the very rare case when we encounter a totally unfamiliar object or situation will no appropriate cognitive model be available,*

[36] Alan Cienki (2010: 175-181); Javier Valenzuela Manzanares (2014: 185-200).

[37] See also related notions such as 'frames' (as discusses by Alan Cienki 2010: 170-175) and 'conceptual frames' (as explained by Jan Engberg 2020: 271-272).

[38] Friedrich Ungerer and Hans-Jörg Schmid (2006: 49).

[39] Friedrich Ungerer and Hans-Jörg Schmid (2006: 51).

but even then, we will presumably try to call up similar experiences and immediately form a cognitive model"[40].

Consequently, when faced with a novel experience—whether an unfamiliar concept or an unknown cultural practice—comprehension can be challenging. However, individuals instinctively relate new experiences to pre-existing cognitive structures. A useful illustration of this phenomenon is the case of a foreign visitor in Britain attending a cricket match for the first time. Without a cognitive model for the game, they may struggle to understand the events on the field. Yet, they are likely to interpret what they see through familiar models—perhaps by drawing parallels with other sports, such as baseball. Thus, new experiences do not exist in a cognitive vacuum; rather, they are immediately placed within an existing framework that facilitates understanding[41].

The same process applies when encountering an unfamiliar legal concept or practice. In such cases, individuals instinctively relate the new experience to a pre-existing cognitive structure. For example, a lawyer trained in a civil law jurisdiction, with no prior exposure to common law, may struggle to grasp the distinction between legal and equitable mortgages[42]. Without a ready cognitive model for these concepts, they are likely to interpret them through the lens of familiar legal constructs—perhaps by drawing parallels with similar security interests in their own legal system. Similarly, lawyers from a civil law background may initially find it difficult to understand the crystallization of floating charges, a concept that those familiar with English property law readily recognize[43]. In attempting to interpret it, a civil law-trained professional will likely relate it to a similar concept from their own legal tradition. However, this comparison can only offer an approximation, and the precise meaning of the concept may remain elusive.

From this discussion, we can conclude that cognitive models serve as lenses through which we perceive and interpret foreign legal concepts. These constructs are integral elements of the rhizomatic network, which, alongside other interconnected rhizomes discussed below, contributes to

[40] Friedrich Ungerer and Hans-Jörg Schmid (2006: 51).
[41] Friedrich Ungerer and Hans-Jörg Schmid (2006: 51).
[42] Andrew Burrows (2007: 405–410).
[43] Andrew Burrows (2007: 453–454).

shaping the ultimate image of legal concepts as they traverse jurisdictional borders and emerge in new legal and non-legal environments.

This individual-level mechanism mirrors, on a broader scale, the cultural dynamics examined in the following section, where collective understandings of law come to the forefront.

VI. Cultural models

Cultural models are well-established constructs not only in cognitive linguistics but also in anthropology, sociology, psychology, and semiotics. They can be defined as shared mental constructs that embody the values and beliefs prevalent within a culture or social group. Like cognitive models, they serve as valuable analytical tools for explaining differences in perception and understanding across various domains of life. However, while cognitive models arise from individual cognitive frameworks, cultural models reflect broader, shared cultural patterns that shape how people collectively interpret the world around them[44].

A useful way to illustrate the role of cultural models in shaping perception is through examples such as the concepts of 'first meal of the day' and 'desk'. They demonstrate that while members of a given culture share similar cognitive models, those models may differ significantly from those of individuals in other cultural settings[45]. Divergences in conceptualization can also arise among speakers of the same language but from different linguistic communities. One study highlights that speakers of American English and those using New Englishes (such as Nigerian English) may conceptualize 'food' differently[46]. This suggests that even when a term is

[44] Friedrich Ungerer and Hans-Jörg Schmid (2006: 51). The significance of cultural models in shaping human understanding is well illustrated by Clifford Geertz, who, in his seminal work "The Interpretation of Cultures", described culture as "*a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes toward life*". This perspective underscores the role of cultural models as fundamental frameworks through which individuals make sense of their experiences. See also Jan Engberg (2020: 272 ff).

[45] Friedrich Ungerer and Hans-Jörg Schmid (2006: 52-54). The influence of cultural models becomes particularly evident when comparing distant traditions, such as European versus traditional Japanese or Chinese cultures. Studies have shown, for instance, that the concept of 'desk' is perceived differently across these cultural groups.

[46] Friedrich Ungerer and Hans-Jörg Schmid (2006: 54-55).

expressed in the same language, it can evoke distinct associations across cultural contexts, ultimately describing slightly different concepts. The significance of cultural models in shaping conceptual understanding is further illustrated by an internet-based attribute-listing test. The study found that in the United States, the word 'bus' is most commonly associated with attributes such as 'yellow', 'school', and 'kids/children' whereas in Britain, it is more frequently linked with 'red', 'public transport', and 'work'[47]. These differing associations lead to distinct conceptualizations of the same term across cultural settings.

In the legal field, we can distinguish cultural models of contracts, notaries, and arbitration agreements[48]. In fact, cultural models in law help explain the divergent perceptions of many legal concepts across different branches of law. These perceptions are shaped by various factors. Even in an era of globalization and transnational legal interactions, distinctions between legal cultures remain evident. For example, some legal systems exhibit a degree of insularity, while others are more open to foreign legal ideas and influences. This openness—or resistance—plays a crucial role in shaping the cultural models associated with legal concepts.

A particularly illustrative example is the judicial approach to arbitration agreements referring disputes to international arbitration tribunals. In legal systems characterized by openness, courts are more inclined to uphold and enforce such agreements. Conversely, in jurisdictions that are less receptive to foreign legal concepts, state courts may be more inclined to prioritize litigation and disregard arbitration agreements in favour of domestic adjudication. In fact, the practice of international commercial arbitration is one of the most compelling examples of how legal concepts are locally contextualized. While arbitration is often regarded as an inherently international mechanism, theoretically detached from local influences, the reality is more complex. In principle, one might expect that arbitration proceedings—regardless of the jurisdiction, governing law, or language used by arbitrators and disputing parties—would yield consistent outcomes in identical circumstances. However, the local context significantly shapes the arbitration process, influencing both the interpretation of

[47] Friedrich Ungerer and Hans-Jörg Schmid (2006: 55).
[48] Roman Uliasz (2024).

arbitration agreements by state courts and the procedural decisions regarding their enforcement[49].

Moreover, even when considered independently of local attitudes, arbitration itself follows a specific cultural model, predominantly shaped by the American legal tradition. This preference for a common law-oriented framework often disregards alternative dispute resolution models from other legal traditions. As a result, ongoing discussions explore ways to make international arbitration less Americanized and more inclusive, challenging the perception that arbitration remains "male, pale, stale"[50].

Beyond concerns over arbitration's American influence, the role of local legal culture in shaping arbitration should not be underestimated. Legal systems vary in their perception of arbitration: some regard it as the preferred method of dispute resolution, while others view it with scepticism, even if it is formally enforced in practice. This initial attitude toward arbitration impacts the likelihood of arbitration agreements being challenged in state courts. Notably, the practice of contesting arbitration agreements may arise even when arbitration is contractually agreed upon, as the enforceability of such agreements is not always absolute[51].

Furthermore, while arbitration is based on mutual agreement, there are cases where one party is effectively compelled to arbitrate. This lack of genuine consent can later increase the risk of the arbitration agreement being challenged in court[52]. Importantly, neither pro-arbitration nor anti-arbitration tendencies necessarily stem from national arbitration legislation alone; rather, they are deeply embedded in the shared cultural model of arbitration within a given jurisdiction.

Cultural perceptions of law ultimately materialize within formal legal frameworks. Section VII therefore examines how these frameworks both reflect and reshape the cultural and cognitive patterns discussed thus far.

[49] Roman Uliasz (2024); Roman Uliasz (2023: 124–138).

[50] Giorgio Fabio Colombo (2023: 166–167).

[51] Article II.3 of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

[52] Roman Uliasz (2023: 134–136).

VII. Legal framework

While extra-legal factors play a significant role in shaping a transplanted legal concept, the legal framework of the target jurisdiction is equally crucial. The ultimate form a transplanted concept takes depends on how it is incorporated into national legislation. The legal framework may introduce only minor modifications, or it may alter the concept so profoundly that it loses its connection to its original form. This transformation can result from the legislator's deliberate intent or from legislative oversight, often stemming from a lack of familiarity with the true substance of the concept. In any case, national legislation provides the decisive context for the reception and adaptation of migrating legal ideas.

The legal framework of a target jurisdiction encompasses more than just statutory law enacted by local legislative bodies. It also includes supranational influences, such as EU law (where applicable) and international law, including treaties and conventions—most notably, the Vienna Convention on the International Sale of Goods. Regarding EU law, its sources may shape national legislation indirectly by requiring legal reforms (as with directives) or may apply directly at the national level (as with regulations). Similarly, international law may also necessitate legislative changes or apply directly, depending on the jurisdiction's approach to its incorporation. In any scenario, EU law, international law, and domestic legislation collectively form a broader rhizomatic network that frames and influences transplanted legal ideas.

While the legal framework provides the formal structure through which transplanted legal concepts are incorporated, this article intentionally treats it in a more concise manner than other components of the rhizomatic network. The primary focus lies on the extra-legal elements—language, cognition, and culture—that precede and inform the process of legal codification. The legal framework, in this sense, represents the endpoint of those influences rather than their origin, serving as the arena where their combined effects become visible.

VIII. Interconnections and interdependencies between the rhizomes

Having examined the individual components of the rhizomatic network—language, cognition, culture, and legal frameworks—we can now trace how these elements interact. This synthesis brings the analysis full circle to the central question posed at the outset: how legal concepts evolve and transform as they move across jurisdictions.

In this section, we focus on the relationships between individual elements in our proposed rhizomatic network, beginning with the interconnections and interdependencies between cognitive models and cultural models. We have briefly mentioned that cognitive models are deeply shaped by the cultural environment in which individuals are raised and live. Culture provides the backdrop for experiences, enabling the formation of cognitive models. As a result, "*cognitive models for particular domains ultimately depend on so-called cultural models*". Cultural models, in turn, "*can be seen as cognitive models shared by people belonging to a social group or subgroup*"[53]. In other words, while cognitive models are inherently individual, cultural models emerge as collectively shared cognitive structures within a given social or cultural group. These models encapsulate shared knowledge, beliefs, values, norms, and practices, shaping how individuals perceive the world, communicate, and behave. As two scholars explain, "*Essentially, cognitive models and cultural models are thus two sides of the same coin. While the term 'cognitive model' stresses the psychological nature of these cognitive entities and allows for inter-individual differences, the term 'cultural model' emphasizes the uniting aspect of its being collectively shared by many people*"[54].

So far, we have seen that there is a bidirectional interaction between cognitive and cultural models. But what about other elements of the proposed rhizomatic network? Can language and legal frameworks also fit into this web? I believe they can. Let us start with the legal framework.

Law, often understood as a set of legal norms, is widely considered a product of specific cultural contexts. Essentially, law is a cultural phenomenon

[53] Friedrich Ungerer and Hans-Jörg Schmid (2006: 51).
[54] Friedrich Ungerer and Hans-Jörg Schmid (2006: 52).

or an element of culture[55]. Therefore, cultural models significantly shape the content of legal norms within a legal system. In some cases, dominant cultural models in a jurisdiction can not only influence how legal concepts are interpreted but may also prevent certain concepts from being introduced into domestic legislation or hinder their practical application. Sometimes, a culture simply is not ready to embrace certain ideas, even if they are formally adopted.

A notable example is the promotion of ADR methods, such as mediation and arbitration, by several Polish Ministers of Justice. Despite legislative changes, the actual use of these methods remained minimal. Statistically, the number of mediations conducted in relation to the number of cases in which mediation could have been applied was low—ranging from 0.5 to 1.7 percent between 2013 and 2024—although the trend has been increasing[56]. This reflects a cultural reluctance to adopt this method of dispute resolution, despite formal endorsement.

Another example is the initial resistance among Polish legal scholars to the concept of simplified companies with little or no share capital, similar to the German mini-GmbH. The idea faced significant pushback, reflecting a cultural model that associates companies with financial solvency guaranteed by a higher share capital. Even after Poland introduced the *prosta spółka akcyjna* (a simplified joint-stock company) with a share capital of just one PLN, the response remained largely negative, underscoring how deeply ingrained cultural models can shape legal perspectives[57].

However, this influence works both ways. While cultural models shape legal landscapes, legal norms can also influence cultural perceptions, creating a dynamic interplay within the rhizomatic network. Over time, a jurisdiction's legal culture can mature and become more receptive to foreign concepts, even if these concepts initially clash with the prevailing culture. This shows a bidirectional relationship between legal frameworks and cultural models. A similar interconnectedness exists between legal frameworks and cognitive models, which are closely tied to cultural influences. As we navigate a legal environment, we internalize specific legal norms, which

[55] Jan Engberg (2020: 272–273).

[56] https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/ (accessed on 14 March 2025).

[57] Joanna Kruczalak-Jankowska (2018: 27–28).

then become part of our cognitive framework. In this way, the legal structure we live within profoundly shapes our cognitive models.

It might be more challenging to observe how individual cognitive backgrounds influence the content of legal norms, but this relationship should not be overlooked. For instance, national legislative commissions that draft laws before they are passed by domestic parliaments can be influenced by the cognitive backgrounds of their members. For example, if members have been educated in a foreign country or are fluent in its language, they may naturally draw inspiration from that country's legislation. In Poland, for instance, it was common to model national laws on German law, particularly in private law, due in part to the educational and linguistic backgrounds of those drafting the laws. This example shows how the cognitive backgrounds of a relatively small group can significantly shape national legislation.

Finally, let us consider the last element of the proposed rhizomatic network: language. As we have discussed, language can shape our understanding of legal concepts, though it should not be seen in deterministic terms. There is a clear connection between language and legal norms, as words and linguistic structures form the building blocks of legal systems. Language expresses legal norms, and it is through language that we access these norms. However, this relationship is also reciprocal. Legal frameworks can influence language, particularly when foreign concepts or legal norms from the EU or international law are introduced, often necessitating the creation of new terms to describe previously unfamiliar concepts. This process is evident in the emergence of anglicisms[58] in the target language or the invention of neologisms when entirely new terms must be coined to capture legal concepts previously unknown in a given jurisdiction[59].

Conclusions

In this article, we have explored the interconnected and interdependent nature of the factors influencing the evolution of legal ideas as they cross borders. This network of factors is rhizomatic, with each element connected

[58] For example, 'leasing' in the Polish Civil Code, or 'timeshare' in the 2001 Polish Act on Timeshare. See also Jan Rudnicki (2017: 207).

[59] See generally Hans Galinsky (1980: 243); Ralph Keyes (2013: 59).

to and influencing the others in multiple directions. As we have seen, this network has no clear origin or endpoint, and no element functions in isolation. Rhizomatic theory therefore offers a valuable framework for understanding the diverse influences on the interpretation and application of legal concepts across jurisdictions.

When legal ideas are examined from a single perspective—whether linguistic, legislative, cognitive, or cultural—the picture remains incomplete. The rhizomatic approach fills these gaps by presenting these individual elements as parts of a dynamic and interwoven system. This multidimensional perspective reveals that meaning in law is not a fixed property of a text but an emergent product of multiple interacting forces. Legal transplants, in this sense, are not merely acts of borrowing; they are acts of re-creation in which linguistic, cognitive, and cultural translations—together with legislative frameworks—continuously reshape the transplanted concept.

From a theoretical standpoint, this model enriches comparative law by moving beyond hierarchical metaphors of influence—such as source and recipient or parent and offspring—and replacing them with a vision of continuous, reciprocal exchange. It invites scholars to trace feedback loops not only between legal concepts but also among the diverse factors shaping their final form: collective cultural patterns influence individual cognitive frameworks, which in turn reshape those cultural patterns; both affect language, while prevailing linguistic structures determine how legislation is articulated in codes. These codes, in turn, reshape language through the emergence of new terms. In this way, legal borrowing is reconceptualized as a process of mutual transformation rather than simple transfer.

For interpretive practice, the rhizomatic model suggests that lawyers, judges, and scholars should remain aware of the networks within which meaning is generated. Understanding how language, cognition, and culture interact can improve both statutory interpretation and comparative reasoning by revealing the hidden assumptions that shape legal understanding. It also underscores the importance of linguistic and cultural competence in cross-jurisdictional interpretation, where apparent equivalence of terms may conceal deep conceptual divergence.

Finally, the rhizomatic framework offers a forward-looking agenda for comparative legal research. It encourages interdisciplinary dialogue with linguistics, cognitive science, and semiotics to examine how legal meaning evolves through interaction rather than linear transmission. By acknowl-

edging the multiplicity of pathways through which legal concepts develop, we gain a more nuanced and realistic understanding of legal change—one that mirrors the complexity of the societies in which law operates.

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"Raise the Black Flag!": The Conceptual Persona of the Pirate against the Law

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ABSTRACT

The pirates were (and, perhaps, are) for the state apparatus and its law the outsider *par excellence*, a miasma and transgressor which needed to be hunted down and exterminated before it manages to infect the "good citizens" with its immorality, brutality and complete ignorance of a sense of duty. On the other hand, radical literature presents a more positive image of the pirates and their societies. It argues that pirate societies were characterised by a sense of mutual aid and equality, based on different ways of living, sense of justice and understanding of a (non)law. The article focuses on the Golden Age of piracy (between mid-17th to early 18th century) to shed more light on this conflicting image of the pirates. Furthermore, the article draws from Gilles Deleuze and Félix Guattari's idiosyncratic terminology, especially terms such as those of the *conceptual persona* and the *nomad* and presents the figure of the pirate as a similar conceptual persona to that of the nomad. In doing so, it aims to argue that the persona of the pirate could be an interesting one in an effort to rethink our ways of existing beyond the current oppressive state's apparatus and its official law, towards a way of living that aims to disorient the dogmatism and hierarchy of the law and which aims do politics following its own (non)law.

KEYWORDS

pirate, Golden Era of Piracy, conceptual persona, nomads, (non)law, Deleuze and Guattari.

1. Introduction

In the plateau, *Nomadology: The War Machine*, Gilles Deleuze and Félix Guattari discuss how the nomads and their war-machine operate as an exterior to the state apparatus (1987). As they argue, the nomads move in a smooth space without beginnings nor ends, as opposed to the striated space of the state, which counts, calculates, imposes fixed identities and ways of living with its hierarchical laws and commands. The nomads form a philosophical, *conceptual persona* (Deleuze & Guattari 1994) which refuses this capture of the law and its oppressive structures. Despite their refusal

to be captured by the state apparatus and its laws, the nomads are not unable to operate, to create and recreate their ways of living. This is done through their own *nomos* or *nomoi* – which are, however, "very different from the law" [*C'est un nomos, très différent de la loi*] (Deleuze & Guattari, 1987, 360; Marneros 2021).

In this article, I aim to argue that this persona of the nomads shares striking resemblances with the persona of the pirate – at least, with the way that this was shaped in the imaginary of the western societies. The pirates were (and, perhaps, are) for the state apparatus and its law the outsider *par excellence*, a miasma and transgressor which needed to be hunted down and exterminated before it manages to infect the "good citizens" with its immorality, brutality and complete ignorance of a sense of duty. Thus, the state authorities and writings often portrays the pirate as a drunkard, a rapist and a traitor – in short, the very personification of evil.[1] On the other hand – and despite the fact that the pirates, their traditions, aims and beliefs remain a mystery – radical literature (Wilson 1995; Kuhn 2010; Graeber 2023) argues that the figure of the pirate could be an interesting one in an effort to rethink our ways of existing beyond the current oppressive state's apparatus and its official law, towards a way of living that aims to disorient the dogmatism and hierarchy of the law and which aims to live and do politics following its own (non)law.

In particular, the pirate code could be seen as a form of nomos that creates and recreates ways of living which oppose the hierarchical structures of the law by "haunting the seas" (Goodrich 2017) and mocking state's jurisdiction, thus questioning its omnipotence. The article examines on the persona of the pirate, its resemblance to the Deleuzian nomad and how the pirate code as a way of life opposes the law of the state. It is important to be noted, however, that I do not aim to suggest that the way that pirates are often portrayed should be seen as identical to the Deleuzian understanding of the nomad and at the same time, I do not aim to idolise the often-

[1] The writings of Sir Edward Coke (1552–1634), a barrister, judge and politician who served as Solicitor General of England and Wales, are exemplary of the state's view on pirates. Coke, who was considered one of the greatest jurists of Elizabethan era wrote in his *The Third Part of the Institutes of the Laws of England* the following: "*pirata est hostis humani generis* [and was] *contra ligeancea suae debitum* ("The pirate is the enemy of humanity in general" and was "against the debt of his liege or allegiance" (found in Goodrich 2017, 206). In essence, this manifests that the identity of the pirate personified the utmost treason against decency, loyalty and allegiance to the law and the state and to that extent, the only proper form of punishment was death.

despicable acts of the pirates or the way that pirate groups, societies and enclaves were structured and operated. What I aim to do is to suggest that the reading of a pirate as a philosophical, conceptual persona through the lenses of the nomad, in Deleuze and Guattari's corpus has the potential to oppose and disorient the hierarchy and dogmatism of the law and the normativity of the state.

In doing so, the article proceeds as follows: In section two and its subsections, I focus on what is known as "the golden era of piracy" which is situated in the mid-17th to the early 18th centuries and, in particular, between 1630s and 1720s (Brunsman 2019; Graeber 2023; Simon 2023). My examination engages mainly with the elements of the "pirate code" or (non)law and the formation of pirate societies and groups. In doing so, I try to demonstrate a different formation of society to those of the state and its official laws. Such pirate societies, as we will see demonstrated significant elements of equality, as well as a shift from the hierarchical structure manifested in western societies – even a tendency to "mock" such hierarchical tendencies. In section three and its subsections, I analyse Deleuze and Guattari's notion of conceptual persona as this explained in their last collaborative project, *What is Philosophy?*. I further discuss its application to the notion of the nomads and their nomos by focusing on Deleuze and Guattari's *Nomadology: The War Machine*. Finally, the concluding section, section four, offers a reading of the pirate's being and thinking through the lenses of the conceptual persona and that of the nomad in order to demonstrate how such a reading can offer a potential escape out of the hierarchy and dogmatism of the state and its laws.

2. The Pirate in the Golden Age

2.1. *Hostis Humani Generis*

We saw above that being a pirate was considered such a heinous crime, one that makes every pirate an enemy of the whole of human race. The laws that existed before the golden era of piracy were deemed to be ineffective in addressing the problem of piracy. To that extent, new laws had to be created in order to address the nuisance caused by the enemy of all. The drafting of these new laws between mid-17th to early 18th century is

another indication that this is, indeed, a period in which piracy flourished – a truly "golden era".

For example, the law of England and Wales addressed issues relating to offences taking place in the sea under the "Offences at Sea Act 1536". The Act was an initial effort from the British authorities to address the problem of piracy. For example, while it did not give a definition of who would be classified as a "pirate", the Act suggests that crimes such as robberies, felonies and murders that happen in the sea, should be tried in the same manner with crimes committed in the land. As such, we can see here an analogy between the identity of the pirate and that of the robber, felon and murderer. Setting this particular narrative regarding the identity of the pirate, the British authorities used the Act to move the act of piracy from the realm of civil wrongs to the that of criminal law. This had as a consequence the application of capital punishment for the newly created crime of piracy (Article I, in Tanner 1922, 347). Another important remark regarding the identity of the pirate, is made by Gabriel Kuhn. Kuhn distinguishes between buccaneers and pirates, suggesting that the former shared some alliances with and maybe had some indirect allegiance with the state and their laws (e.g. British buccaneers were plundering and robbing Spanish armadas and *vice versa*) while the latter did not have any allegiance or alliance. "A pirate is in a perpetual war with every individual, and every state, Christian or infidel. Pirates properly have no country, but by the nature of their guilt, separate themselves, and renounce on this matter, the benefit of all lawful societies" (Kuhn 2010, 8). Thus, the state did not only take an issue with piracy due to the acts committed by the pirates but rather it was the refusal to obey, to become part of the state apparatus and utilised for its aims that turned pirates into the absolute enemy. This is perhaps, the main reason which made the pirate the enemy of humanity *par excellence*.

Going back to the way that state authorities tried to addressed piracy, we find an important development in the late 17th century. With the emergence and flourishing of piracy the existing law was considered insufficient and certain corrections were considered necessary. During the reign of Henry VIII, the "Piracy Act 1698" was passed to resolve the inadequacies of its predecessor. This is evident in the reasoning given for the enactment of the Act and which is worthy citing in its full length:

> Whereas by the Offences at Sea Act 1536 it is enacted that Treasons Felonies Robberies Murthers and Confederacies committed on the Sea shall be enquired of tryed and determined according to the common Course of the Laws of this Land used for such Offences upon the Land within this Realme whereupon the Triall of those Offenders before the Admirall or his Lieutenant or his Commissary hath beene altogether disused And whereas that since the making of the said Act *and especially of late Yeares it hath beene found by experience That Persons committing Piracies Robberies and Felonies on the Seas in or neare the East and West Indies and in Places very remote cannot be brought to condign Punishment without great Trouble and Charges in sending them into England to be tryd within the Realme* as the said Statute directs insomuch *that many idle and profligate Persons have beene thereby encouraged to turne Pirates and betake themselves to that sort of wicked Life* trusting that they shall not or at least cannot easily be questioned for such their Piracies and Robberies by reason of the great Trouble and Expence that will necessarily fall upon such as shall attempt to apprehend and prosecute them for the same And whereas the Numbers of them are of late very much increased and their Insolencies soe great that unlesse some *speedy Remedy be provided to suppresse them by a strict and more easie way* for putting the ancient Laws in that behalfe in Execution the Trade and Navigation into remote Parts will very much suffer thereby [emphasis added].

It is significant to note here that the British parliament considered the 1536 inadequate due to the increasing number of pirates. This because, according to the 1698 Act, the pirates had to be transferred back to Britain to face trial. The Piracy Act delegated powers to admirals and their officers to conduct these trials either on their ships or British colonies, whichever place deemed to be more convenient. In addition, the inadequacy of the laws preexisting the 1698 Act had another negative impact; it encouraged more and more sailors, privateers and other members of the navy to become pirates, because they considered the possibility of punishment to be minimal. The punishment for those who were found guilty of piracy was death, following the 1536 Act. Furthermore, another important information that we learn from the 1698 Act is the *place* of pirate operations, namely, East and West Indies in the Caribbean.

The place of operation of the pirates had a significant impact on the collective imaginary regarding the persona of the pirate. In the book *A General History of the Robberies and Murders of the most Notorious Pyrates* published in 1724, by a mysterious author or authors under the name, Captain Charles Johnson (most probably it was the pseudonym of the writer Daniel Defoe), we learn about the legendary pirate enclaves in Hispaniola (situated between Cuba and Puerto Rico), Tortuga (in Haiti) and Port Royal (in Southeastern Jamaica). This imaginary has two sides. The first narrative is based on the dominant, negative narrative around pirates' brutality and incivility, developed and promoted by the state and its allies. The second is based on contemporary, radical literature, which focuses on the way that the pirates organised in the aforementioned enclaves. For example, we learn, that in these enclaves, the pirates achieved to create "their own short-lived [but] highly anarchic society" (Wilson 1995, 190). What is significant about these enclaves is that, while pirates are always considered *creatures of the sea*, these enclaves demonstrate another element of the persona of the pirate and the model of society that it created, namely the formation of pirate enclaves *on land*. This aspect of pirate life was, perhaps, neglected or it was rather buried by the official narrative of the state which aimed to present them as brutes and murderers.

In Captain Johnson's negative portrayal of pirate life, we encounter stories about the way pirates mistreated the local population. For example, in his account of the pirate, Captain Charles Vane and his crew, who operated around New Providence in Bahamas and Hispaniola, Captain Johnson states the following: "[…] Vane went to a small island and cleaned; where they shared their booty and spent some time in *a riotous manner of living, as is the custom of Pirates*" (2022, 105 [emphasis added]). Captain Johnson continues the account by stating the following: "Vane made towards the coast of Hispaniola, living riotously on board, having a store of liquor, and plenty of fresh provisions, such as hogs, goats, sheep, fowl, which he got upon easy terms for touching at a place called Isleatherer [? Adderley], he plundered the inhabitants of as much of their provisions as they could carry away" (2022, 122). In these passages we see that the pirates' identity is part and parcel with a riotous way of life. Being a pirate is thus, equated with being automatically a nuisance to the peaceful population of their places of operation. The pirates are drunkards that engage in plunder and gluttony and shamelessly rob the flock and provisions of the locals. More interestingly,

Captain Johnson gives a further reason on why the pirate enclaves in the Caribbean were short-lived. He presents the pirates as hotheads who engage constantly in excessive and unreasonable in-fighting. Continuing his account of Captain Charles Vane and his crew, Captain Johnson narrates how a successful operation, that gave Vane the command of a rich British ship, called the *Kingston*, did not last long, due to an inexplicable and immature quarrel over the quantity of alcohol with the (in)famous fellow pirate, Captain John Rackham, or, as it is better known, Calico Jack:

> Here they cruised to about February, when, near the windward passage of Cape Maysi, they met with a large rich ship of London, called the *Kingston*, laden with bale goods, and other rich merchandise, and having several passengers on board, some English, and some Jews, besides two women. Towards the north end of Jamaica they also met with a turtle sloop, bound in for that island, on board of which (after having first plundered her) they put the captain of the *Kingston*, and some of his men, and all the passengers, except the two women, whom they kept for their own entertainment, contrary to the usual practice of Pirates, who generally sent them away, lest they should occasion contention.
>
> The ship *Kingston* they kept for their own use, for now their company being strengthened by a great many recruits, some volunteers and some forced men out of the Neptune and Kingston, they thought they had hands enough for two ships. Accordingly, they shifted several of their hands on board the *Kingston* and John Rackham, alias Calico Jack (so called, because his jackets and drawers were always made of calico) quartermaster to Vane, was unanimously chosen Captain of the *Kingston*.
>
> The empire of these Pirates had not been long thus divided before they had like to have fallen into a civil war amongst themselves, which must have ended in the destruction of one of them. The fatal occasion of the difference betwixt these two brother adventurers was this: It happened that Vane's liquor was all out, who sending to his brother captain for a supply, Rackham accordingly spared him what he thought fit, but it falling short of Vane's expectation, as to quantity, he went on board of Rackham's ship to expostulate the matter with him; so that words arising, Rackham threatened to shoot him through the head, if he did not immediately return to his own ship, and told him likewise that if he did not sheer off and part company he would sink him (Johnson 2022, 123).

The portrayal of pirates by the state and pro-state accounts had a significant impact on the formation of a persona of the pirate as synonymous to absolute evil. The pirate is a drunkard, a rapist ("except the two women, whom they kept for their own entertainment") murderer and a thief that does not care about anything and anyone else but for itself. It is someone that is prepared to sacrifice big gains (for example, command of a large crew and rich ship, such as the *Kingston)* for the insignificant reasons such as a quarrel over the sharing of alcohol and as such, someone who is irrational and untrustworthy.

This is crucial if we consider that the Pirate Golden Age runs in parallel with the Enlightenment period. The Enlightenment era, the age of reason, is the period in which we witness "*man's emergence from his self-imposed immaturity. Immaturity* is the inability to use one's understanding without guidance from another. This immaturity is *self-imposed* when its cause lies not in lack of understanding, but in lack of resolve and courage to use it without guidance from another" (Kant 2009, 1). While reason was celebrated as the highest value of the Enlightenment era and it was only through reason that human beings were to liberate themselves from their immaturity and inability to act autonomously, the sort of conduct of the pirates and the violation of the moral and rational law of the so-called "civilised states" stand as the opposite of such values. The pirate, thus, represents the absolute enemy of the greatest values of humanity – a true *hostis humani generis*. To that extent, for the narrative produced and supported by the state, the pirate must be annihilated both physically and as a persona that mocks and disobeys the state and its laws, and which may intrigue the interest of the collective imaginary. While the state may have succeeded in its first aim, with the numerous executions of pirates and the destruction of their enclaves, state's second aim has not been very successful.

2.2. Pirate (non)law and alternative politics

There is a different, clandestine narrative that unfolded and escaped the official accounts of the state. A consensus suggests that the seamen who ended up becoming pirates were coming from the lowest social classes and as such, they were considered by the official accounts as "desperate Rogues who could have little hope in life ashore" (Rediker 1981, 208).

What the state's classism considered as a unity of outcasts, a dangerous miasma that aims to disorient and infest the peaceful life of the upper-classes and the trade of colonial Empires, was something that gave a sense of unity amongst those who ended up becoming pirates. What also united these outcasts was the lack of any familial and national ties, thus, the nationalistic and racist tendencies that prevailed in the mentality of the state were completely alien to pirates. According to David Lister and Marcus Rediker:

> The alternative social order of the pirate ship was all the more impressive because it had been created by the "villains of all nations", workers of many races and ethnicities who, according to conventional wisdom, in their own day and in ours, were not supposed to cooperate. Any given pirate ship might have English, Irish, Greek, Dutch, French, or Native American crew members.
>
> African and African American seamen played an especially prominent role as they freely and subversively sailed Caribbean and North American waters near the coastal slave plantations from which many of them had escaped (2023, 6).

We further see how the pirate life was an alternative to slavery for many African and Afro-Caribbeans who managed to break their bonds and joined a crew. We should not hold naïve views and valorise the aims of the pirates though. According to Gabriel Kuhn "[t]he threat that the golden age pirates posed to the slave trade, however, did not come from the pirates' struggle for equal rights or an early abolitionist conviction, but from interrupting its routes, stealing its "cargo" and making its ventures more costly" (Kuhn 2010, 67). Nonetheless, we should not underestimate the fact that piracy, even indirectly, became a form of resistance against the colonial practices of the west. Especially, the way that pirates treated ex-slaves in the plantations and accepted them in their ranks and/or shared a relationship of respect and mutual aid is diametrically oppositional to the way that the so-called "civilised" Europeans treated these populations (Kuhn, 2010, 67). Even in the situations where the native populations were treated harshly and were the victims of plunder by the pirates, these populations had *the option* and felt *empowered* to cut all ties and business relations with the pirates. Of course, a similar response would have been impossible to even

think about, let alone act upon, when it came to their relations with the European colonisers.

Similarly, the pirate ships and enclaves were critical of organised religion. The official account of the state presented the pirates as infidels, demons, pagans and satanists due to what the state conceived of as immorality and blasphemy. The stance and ethos of the pirates towards life was again something that made the "pious" Europeans quite perplexed. According to Rediker, anyone who chose the pirate life knew that death was lingering (Rediker 1981, 209). The acceptance of a short but free life and the refusal of dominant morality had a huge impact on the way that the pirates understood organised religion. The most famous pirate symbol, the black flag with the skull, "the Jolly Rogers" manifests this acceptance of death and the freedom accompanied by it. "Beneath the Jolly Roger, "the banner of King Death", a new social world took shape once pirates had, as one of them put it, "the choice in themselves" (Rediker 1981, 204). There was not any promise of tomorrow, let alone of afterlife, there was only *this life*, a life of freedom from the yoke of organised religion and moral law, a life with *no gods and no masters*.

More importantly for our purposes here, the critical stance against organised religion and the acceptance of a short life, had an impact on the way that pirates structured their social life and their communities. Their critical stance towards the dogmatism and hierarchy of religion "held that the punitive apparatus of European law and religion was made necessary only by an economic system arranged in such a way that it would inevitably produce precisely the behaviours that apparatus was designed to repress" (Graeber 2023, 8). The pirates rejected the rigid authority of the law of the state and its hierarchical formation. In its place, they enacted pirate codes, according to the needs and formation of the crews and the enclaves. Radical commentators agree that such codes were revolutionary in comparison to the legal charters of the age (Kuhn 2010, 81). Interestingly, the articles of the codes were written down and were specific to each crew (see Simon 2023 for examples of different codes). These codes were rather experimentations on horizontal, participatory politics with an *anarchic* character, in the sense that did not recognise any form of higher authority be that in the form of law, morality or a ruler, such as the captain. For example, Rediker informs us that:

> A striking uniformity of rules and customs prevailed aboard pirate ships, each of which functioned under the terms of written articles, a compact drawn up at the beginning of a voyage or upon election of a new captain, and agreed to by the crew. By these articles crews allocated authority, distributed plunder, and enforced discipline. These arrangements made the captain *the creature of his crew.*[2] Demanding someone both bold of temper and skilled in navigation, the men elected their captain. They gave him few privileges: he "or any other Officer is allowed no more [food] than another man, nay, the Captain cannot keep his Cabbin to himself" (1981, 209).

In terms of the sharing of the bounty, this was also dictated by the written articles of the respective codes of ship or enclave. The portion was usually determined by the kind of expertise which was offered by each member of the crew and their *usefulness* to the rest (e.g. captain, doctor, warrior and so forth) (Rediker 1981, 209). This is radical even for our current standards as the pirates demonstrated that they replaced a conception of themselves as workers with a conception of themselves as partners in a cooperation.

Ultimately, when it comes to the question of justice, the pirates demonstrate a unique understanding of what it means to serve the just and punish the unjust. While pirate justice created an ethics of vengeance – yet, and this is the important aspect here – this vengeance was against those who were enjoying a position of authority. Kuhn explains that pirate "justice is done by avenging what is perceived as *injustice*, namely the arbitrary violence and domination exercised by those with "authority) (2010, 159). At the same time, within their communities the pirates tried to make the procedure of justice as smooth and as inclusive as possible. According to Captain Johnson, the pirates were deciding how to serve justice in communal councils which unlike the esteemed courts of the state "had more lawful commissions for what they do" (2017, 1993). Violations of justice such as bribing, abusing

[2] The position of the captain as a servant of the crew is similar to the way that Pierre Clastres (2020) described the role of the chief in the Indigenous American tribes that he examined, such as the Guayaki in Paraguay. His ethnographic work demonstrates how the chief acted merely as a facilitator of the tribe in negotiations and distribution. Any chief that was not generous and tried to take advantage of the position, was to be disposed or abandoned. This was also something that confused (and still confuses) the hierarchical mentality of the west. On this comparison see also, Kuhn (2010, 30–34).

witnesses and the jury – still common in our liberal democracies – were completely unknown to them (Johnson 2017, 193). The language of the procedure and the councils was as simple as possible in order to ensure inclusivity for all, irrespective of their level of education and/or knowledge of the language – something extraordinary if we consider the legal terminology of the judiciary and the justice system of our states (Johnson 2017, 193).

In this section, I highlighted some of the main achievements of the pirates when it comes to the way they disoriented and questioned the official law and politics of the state. While their achievements in many aspects are quite extraordinary, this should not lead us to consider that pirate societies were ideal.[3] Instead, my aim here is to demonstrate that it is useful to ponder on the persona of a pirate, as a method of thinking about law and politics otherwise. To that extent, in the subsequent section, I focus on Deleuze and Guattari's writings on the notion of the conceptual persona and that of the nomad against the law, to draw parallels with the portrayal of the pirate presented here.

3. Deleuzoguattarian terms and the pirate

3.1. The conceptual persona

In Deleuze and Guattari's idiosyncratic definition of philosophy as "the discipline that involves *creating* concepts" (1994, 5), we encounter the "conceptual persona" as a philosophical term. The term signifies the use of fictional or quasi-fictional (in the sense that they may be historical characters, but their use does not focus and does not claim to aspire towards "historical authenticity") characters which are used by authors, or in better terms by philosophers, in order to facilitate them to create new philosophical concepts. The conceptual personae are further used to express and convey these new philosophical ideas to their readership and/or audience. Deleuze and Guattari explain that philosophers can use both sympathetic and antipathetic personae in order to advance their thinking and create *new*

[3] Previously it was stated, for example, that their fight against colonial practices was often driven by their profiteering rather than their ideological opposition to them. It was further stated that their treatment of indigenous populations was heinous in many cases.

image of thought, that is, new ways of thinking, living and doing politics.[4] Furthermore, it is important to clarify that the conceptual personae are not "aesthetic figures", in the sense that their purpose is not to create affects and percepts, such as works of art (Deleuze & Guattari 1994, 65). Instead, the conceptual personae are the forces that facilitate the creation of philosophical concepts.

To that extent, the conceptual personae should be understood as integral participants in this constructive process of philosophical discipline and concept-creation. Yet, the conceptual persona:

> is not the philosopher's representative but, rather, the reverse: the philosopher is only the envelope of his principle conceptual persona and of all other personae who are the intercessors [interscesseurs], the real subjects of his philosophy. Conceptual personae are the philosopher's "heteronyms", and the philosopher's name is the simple pseudonym of his personae. I am no longer myself but thought's aptitude for finding itself and spreading across a plane that passes through me at several places. The philosopher is the idiosyncrasy of his conceptual personae. (Deleuze & Guattari 1994, 64).

This "real subjects" of a philosopher's thought can be understood as the characters that "map out" (Deleuze & Guattari 1994, 69) a thinker's thought; to that extent, they give material or *personality* (Deleuze 1995, 96*)* to the philosophical concepts that populate its philosophical plane. In other words, a persona should not be thought as an actual subject (i.e. not the person Socrates in the Platonic dialogues, but rather the persona, Socrates). A persona in this sense is the indicator of a territory that points out certain problematisations generated by the thought of a philosopher, a particular tradition or timeline (for example, Spinoza's philosophy, "phenomenology" or "Roman philosophy"). Furthermore, a conceptual persona can also help us to draw a sort of lineage of a particular thought, such as "a philosophy of immanence" (as that of Deleuze) as opposed to that of "transcendence"

[4] The main example they provide is that of Friedrich Nietzsche. Nietzsche "populated" his thought by adversarial conceptual personae, such as those of Christ, the priest, the higher man and Socrates, and worked along with his sympathetic personae, such Zarathustra and Dionysus (Deleuze & Guattari 1994, 65).

(as that of Plato). For example, in Spinoza, Nietzsche and subsequently Deleuze the critique and opposition against the persona of the priest functions as a device which gives "a material form" to the dogmatic machinations of the official morality and the law of the state. If philosophy is, according to Deleuze "like a novel" (1995, 140), the personae can be thought of as the protagonists of this novel that materialise its story's *morale* or *ethos* (Marneros 2022, 171). For example, the persona Socrates *territorialises*, in a geographical or temporal manner (for example, as in "Classical Greek philosophy") certain problems posed by Platonic thought (for example, the meaning of *eros* or justice). When philosophy is faced with new problematisations, new conceptual personae will emerge to *deterritorialise* the pre-existing concepts, which lose their interest on behalf of new concepts. For example, Zarathustra deterritoralises the pre-existing values and reterritorialises philosophical thought, in a temporal manner and a particular philosophical tradition, i.e. late 19th century and Nietzschean thought, to pose and engage with different problems of the relevant period (e.g. Nietzsche's effort to revalue the dominant values of western thought and Christian morality). The relationship between the conceptual persona and the philosopher is one of becoming, not in the sense that the philosopher will be exhausted in their conceptual persona and *vice versa* – "[b]ecoming is not being, and Dionysus becomes philosopher at the same time that Nietzsche becomes Dionysus" (Deleuze & Guattari 1994, 65) – but rather in the sense that the conceptual persona unleashes the creative forces of philosophy, its becoming(s) and ensures the creation of innovative concepts.

Following this line of thought we can say that the figure of a pirate is such a conceptual persona; one which functions as the mapping out and the materialisation of different way of living, beyond the yoke of the state and its official law, religion and morality. The *ethos* – that is the way of living – of the persona of the pirate is, thus, creative in its opposition to the dogmatic mentality of the legalistic rules of the state. But how does the persona of the pirate achieve that? The first step is a dissatisfaction with ready-made solutions which leads the pirate to become a vagabond or, in the Deleuzoguattarian jargon, *a nomad*. What I mean by that, is that the *conceptual persona* explores different ways to respond to a particular case and, thus, freely wanders (as a nomad, not necessarily in terms of physical movement), including into uncharted or extra-juridical waters – the (non) law of the pirates. Through this "journey" the pirate arrives at the second

step of creativity: invention. The persona of the pirate strives to produce interesting and inventive ways to problematise and respond to a singular situation (for example, how to share the bounty amongst the crew), without falling into the trap of searching for ready-made solutions in the dogmatic and moralising commands of the state and its law. Thus, the pirate as a conceptual personal, which is subjected to no fundamental laws, is in a position to unleash "an active" critique (as opposed to a reactive one, which simply opposes or compromises)[5] – and to experiment, question and problematise – or even go against the supposedly, "sacred" commands of the law of the state and its norms of juridical stagnation. In order to grasp how the persona of the pirate can help us in our efforts to think beyond and against the law, it is important to examine how Deleuze (with Guattari) create the philosophical persona of the nomad. The nomadic movement and the nomos of the nomads as opposed to the law of the state share some very interesting similarities to the pirate's constant effort to escape the official law of the state and its ability to create something new – its (non)law.

3.2. The Nomad

While Deleuze did not write directly on issues relating to juridical studies, the law and its theory, he emphasised his fascination of the law and the process of law-creation in multiple instances.[6] Yet, the kind of the law that he was interested in had nothing to do with the official law of the state and the way that judges decide – "we mustn't go on leaving [law creation] to judges" he proclaimed (Deleuze 1995, 169). Instead, his use and understanding of law, or nomos, and his writings on the conceptual persona of the nomad, point toward a way of living beyond the yoke of the state and its law, one which disorients and questions state's dogmatism.

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[5] For the distinction between active forces and reactive ones, see Deleuze's reading of Nietzsche's thought. (2006). The former set of forces are creative, and they strive to offer new, inventive modes of living and thinking, whereas the latter are a mere reaction to the already-existing dogmatic ways of commanding our ways of living, and thus, they are *uncreative*.

[6] Speaking to Claire Parnet, he says: "I have always been fascinated about jurisprudence, about law... If I hadn't studied philosophy, I would have studied law [...]" (Deleuze 2004). In another instance, he states when he was asked by Dominique Séglard why he chose to do his thesis on David Hume, Deleuze, replied "[b]ecause of the law. My true vocation is the law, philosophy, and the law" (Dosse 2007, 121). On Deleuze's understanding of "jurisprudence" see, Marneros (2019).

Deleuze engages with the notion of nomos in *Difference and Repetition*, where he refers to the practice of the distribution *in* land in Homeric period. While *nomos* is widely known as the modern Greek translation of the English word "law", according to Deleuze, its Homeric use significantly differs from our understanding of what law is or could be nowadays – "it is a *nomos* very different from the 'law'" (Deleuze & Guattari 1987, 360). Following the analysis on the meanings of the word by the French linguist Emmanuel Laroche, Deleuze explains that nomos for Homeric society has a pastoral sense. For Deleuze, this meaning of allocation or distribution was not a matter of land distribution, because as he states the understanding of nomos as land-distribution was "only belatedly implied" (Deleuze 1994, 309). Instead, Deleuze explains that:

> Laroche shows that the idea of distribution in *nomos-nemō* does not stand in a simple relation to that of allocation [*temnō, diaō, diaireō*]. The pastoral sense of nemo (to pasture) only belatedly implied an allocation of the land. Homeric society had neither enclosures nor property in pastures: it was not a question of distributing the land among the beasts but, on the contrary, of distributing the beasts themselves and dividing them up here and there across an unlimited space, forest or mountainside. The nomos designated first of all an occupied space, but one without precise limits (for example, the expanse around a town) – whence, too, the theme of the "nomad" (1994, 309).

The opposition of nomos and the nomad to the enclosed space is significant as it presupposes a different way of existing beyond the limits of the state, law and property. If the nomads and their nomos is not limited by any enclosure, "[t]hen there is a completely other distribution which must be called nomadic, a nomad nomos, without property, enclosure or measure. Here, there is no longer a division of that which is distributed but rather a division among those who distribute themselves in an open space – a space which is unlimited, or at least without precise limits" (Deleuze 1994, 36).

Along with Guattari this time, Deleuze revisits the notion of the nomos and the nomad and, more importantly, the issue of space. Influenced by the method of musical composition of the composer Pierre Boule, they make the distinction between *smooth* and *striated* space (Deleuze & Guattari

1987, 553-554). Speaking about the model of nomadic movement, they explain that:

> The model is a vortical one; it operates in an open space throughout which things-flows are distributed, rather than plotting out a closed space for linear and solid things. It is the difference between a *smooth* (vectorial, projective, or topological) space and a *striated* (metric) space: in the first case "space is occupied without being counted", and in the second case "space is counted in order to be occupied" (1987, 361-362).

The persona of nomad, as that which follows nomos but not law, moves within a *smooth space*. This suggests that striated space, faithful to the calculable or metric mentality of the state apparatus and its official law, *calculates* which beings, ideas, ways of living, morals and so forth, are "fit" to be included within the enclosed space of its boundaries of *pseudo-benevolence* and *protection*. To that extent, the striated space measures, puts barriers, borders and hierarchises between insiders and outsiders, "good citizens" and transgressors, or for our purposes here, humanity and the pirate as the enemy of humanity. On the other hand, smooth space is a place for creation and invention without a predestined or pre-empted distribution of shares, laws, morals and so forth. It is there to be occupied and moulded accordingly, in order to serve particular needs and respond to a particular situation.

The nomads disorient the authority of the state apparatus and striated space because such a static or striated formation of identities is insignificant [for them] since their slipping away from the norms of the state ensures the dissolution of any form of identity that could supposedly claim any sort of purity (Deleuze & Guattari 1987, 362-363). Operating within a smooth, boundless space, the nomads are – even when they do not physically in movement – always slipping from the capture of the state and its law. Their space is without a beginning or end, similarly to *the becoming of the conceptual persona*. In that sense, the nomad proceeds in a mode of *becoming*, in the sense that one refuses to be limited by any form of stagnation of the official law of the state and its morality, which dictates rigid norms and identities. As such, the nomad comes to disorient the conformity of the obedient subject to the state, i.e. "the good citizen". Perhaps, the most distinctive characteristic of the nomads is then that they always try to slip away from the law, the state apparatus, its official laws and morality.

> [E]ven though the nomadic trajectory may follow trails or customary routes, it does not fulfil the function of the sedentary road, which is to *parcel out a closed space to people*, assigning each person a share and regulating the communication between shares. The nomadic trajectory does the opposite: it *distributes people* (*or animals*) *in an open space,* one that is indefinite and non-communicating. The *nomos* came to designate the law, but that was originally because it was distribution, a mode of distribution. It is a very special kind of distribution, one without division into shares, in a space without borders or enclosure. The *nomos* is the consistency of a fuzzy aggregate: it is in this sense that it stands in opposition to the law or the *polis,* as the backcountry, a mountainside, or the vague expanse around a city ("either *nomos* or *polis*"). Therefore, and this is the third point, there is a significant difference between the spaces: sedentary space is striated, by walls, enclosures, and roads between enclosures, while nomad space is smooth, marked only by "traits" that are effaced and displaced with the trajectory. Even the lamellae of the desert slide over each other, producing an inimitable sound. The nomad distributes himself in a smooth space; he occupies, inhabits, holds that space; that is his territorial principle. (Deleuze & Guattari 1987, 381-382).

While the state always tries to appropriate nomadic creativity – presenting it even as "entrepreneurship", "innovation" and "progress", the nomads must remain vigilant and find the *line of flight* to escape capture, and to continue to live in a creative, open space. All the above demonstrate a clear relation between the persona of the nomad and the persona of the pirate. In the concluding section, I aim to shed more light on this and its usefulness for an effort to rethinking our ways of living and a politics beyond the yoke of the law.

4. The conceptual persona of the pirate against the law and the state

An immediate relation between the conceptual persona of the nomad and that of the pirate can be drawn through their relevance to the sea. The "sea is perhaps principal among smooth spaces, the hydraulic model par excellence" (Deleuze & Guattari 1987, 387). The pirate as a creature of

the sea operates within this smooth space. Yet, as Deleuze and Guattari further explain, "the sea is also, of all smooth spaces, the first one attempts were made to striate, to transform into a dependency of the land, with its fixed routes, constant directions, relative movements, a whole counterhydraulic of channels and conduits" (1987, 387). Perhaps, the hatred towards the pirate by the "civilised" states is due to the latter's resistance to the striation of the sea. The pirate wanted to keep the sea free from enclosures, predetermined routes and more importantly, the calculations of the market via trade and its most heinous form, *slavery*. The pirate through its nomadic movement and its ability to map out its own territories, through the nomoi of the pirate code demonstrated that the organisation of society through the state-form and its laws is not the only way of living and doing politics.

However, the pirate should not be only understood as a creature of the sea but also, as stated above, its operation in the land is equally important, if not more significant. This is because the pirate not only manages to escape the capture of the state and its law in the sea, but it further manages to disorient the law of the state in the latter's safest enclosure, namely *the land*. While, admittedly, the pirate utopias were not always successful in creating a purely smooth space (and perhaps, this was never their aim), they remain important because they can help us imagine an alternative to our current state of affairs. This is achieved because the pirate manages to keep its habits, traditions and way of living in the enclaves that it creates in land. We saw how in places such as Tortuga and Hispaniola, the pirate formed alliances with the local populations, treating them even as equals and offered a way out of the colonial yoke of the west. The persona of the pirate, thus, "infests" the safe space of the state, i.e., the land. The pirate desecrates state's laws and "mocks" its authority and dogmatism. Moreover, just like the Deleuzoguattarian nomad, the pirate is not reduced by the laws of the state – these are rather external and alien to it. Instead, the pirate chooses to map its own territories, which are boundless. This is achieved, as we saw, by developing its own sense of (in)justice and its own (non)law in the form of the pirate code.

To that extent, the pirate code of the pirate, just like the nomos of the nomads and their distribution into space, paves the way for a necessarily non-juridical understanding of a (non)law since it escapes the narrow-preset boundaries of juridical hierarchy and dogmatism. The nomadic law and the pirate code expose the law's blackmail of the supposedly catastrophic

results in the absence of the state, demonstrating that a life beyond its yoke is not only possible but also *desirable*. By disorienting the striated and calculable distribution in the enclosure of the state – the constant blackmail, that "there is no alternative" – the pirate invites us to see that these limits are just a "sham" that permits the eternalisation of the pacifying domination in the form of rules disguising the *a priori* necessitated distinction between the "masters" and the "subordinates" and the ways in which we can oppose such masters. Ultimately, then, the conceptual persona of the pirate can, hopefully, point towards an alternative way of living beyond and against the state and its law.

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Rhizomatic Law and China's Experience: Between Past and Future

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ABSTRACT

The People's Republic of China was founded on 1 October 1949. After the Cultural Revolution, Deng Xiaoping decided to launch a new series of reforms, widely known as the China's "opening up" policy (*gaige kaifang* 改革开放). With this new idea, China had to develop the entire legal system from scratch. All the changes were introduced for the sake of building a market economy and boosting the country's economic growth. It is worth noting that the legal system of this country is highly influenced by philosophy, social context and political views. Therefore, the aim of this paper is to explain the past experience in building China's legal system and its future changes based on the concept of "rhizome". Therefore, this study pays attention to some philosophical and social issues, including Confucian philosophy, which still play a crucial role in shaping Chinese reality and law. This analysis leads to the conclusion that the Chinese legal system is a good example of "rhizomatic law". In the case of the PRC, this idea should be perceived through the lens of the complexity and dynamism of the legal framework.
The Chinese legal landscape is built on the interplay between formal laws, informal norms and cultural traditions.

KEYWORDS

China, legal system, Confucianism, rhizomatic law, filial piety, guanxi

The essence of "rhizomatic law": Historical background

At the outset, it is worthwhile to note that the concept of "rhizomatic law" was introduced by Gilles Deleuze and Félix Guattari. They based it upon the idea of "rhizome" in philosophy which considers a non-hierarchical, decentralized, and fluid structure concerning knowledge, power and social organization. Indeed, this approach differs significantly from the traditional, linear structures. Importantly, from the legal perspective, the "rhizomatic law" introduces a new approach contrary to the rigid legal frameworks. It pays attention to dynamic and adaptative legal systems which stress the importance of interconnectedness. As such, "rhizomatic law" provides an alternative towards understanding the legal systems according to their

fluidity and multiplicity[1]. In other words, the "rhizomatic" approach challenges the traditional way of classifying legal systems and opts for viewing law in broader network. Therefore, it focuses on all different types of connections which are not fully predetermined, by contrast, they emerged because of both interactions and negotiations. To illustrate, the concept of Swedish "allemansrätten" addresses public and private domains which are coexisting without a strict dichotomy. This example stresses the flexibility which is inherent in view of the rhizomatic jurisprudence[2].

One must note that "rhizomatic law" upholds the significance of flexibility and adaptability in terms of legal frameworks[3]. Apparently, such an approach may even be useful in enhancing the access to justice based on more inclusive interpretations of cultural commons. As such, "rhizomatic law" is recognized as an innovative perspective within the framework of legal theory. Indeed, it promotes not only an understanding of law as a fluid but also interconnected system far from a static set of rules. This perspective seems to facilitate the evolution of legal system itself which aligns with the changing needs and values of the society.

There are many features of the rhizomatic law that can be summarized as follows: decentralization and non-hierarchy, multiplicity and diversity, adaptability and flexibility, interconnectedness and horizontal connections alongside dynamic and non-linear growth.

Pursuant to the first feature, namely decentralization and non-hierarchy, the rhizomatic law differs significantly from traditional legal systems[4]. The latter are based upon the clear chain of command where both courts and legislatures play a crucial role. By contrast, in the case of rhizomatic law, there are many interconnected nodes functioning within a network but there is a lack of a single center of control. This entails that the so-called

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[1] G. Deleuze & F. Guattari (1987). *A Thousand Plateaus*. Minneapolis: University of Minnesota Press, pp. 1-8; Patton, P. (2016). Deleuze and naturalism. *International Journal of Philosophical Studies, 24*(3), 348-364. https://doi.org/10.1080/09672559.2016.1175103; M.A. Peters & D. Taglietti (2019). Deleuze's rhizomatic analysis of Foucault: Resources for a new sociology? *Educational Philosophy and Theory*. https://doi.org/10.1080/00131857.2018.1551831.

[2] See: M. Bruncevic (2015). We need to talk about the cultural commons: Some musings on rhizomatic jurisprudence and access to art. *NAVEIÑ REET: Nordic Journal of Law and Social Research*, (6), 115-130. https://doi.org/10.7146/nnjlsr.v0i6.111056

[3] M. Bruncevic (2014). *Fixing the shadows: Access to art and the legal concept of cultural commons*. Göteborg. https://core.ac.uk/download/pdf/20043826.pdf.

[4] Y. Akindes, (2015). *Rhizome. Key Concepts in Intercultural Dialogue, (67)*. Retrieved from https://centerforinterculturaldialogue.org/wp-content/uploads/2015/06/kc67-rhizome.pdf

authority belongs to many different actors such as individuals, communities, institutions along with informal networks. To illustrate, even nowadays, there are many societies which uphold the existence of customary laws along with religious norms and community practices. In practice, they all coexist with the so-called formal legal practices and thus result in forming a decentralized web of rules.

Secondly, the "rhizomatic law" stands for the coexistence of multiple legal orders which coexist with norms and sources of legitimacy. According to this concept, the law itself cannot be reduced only to a monolithic entity. Instead, the law represents an ever-evolving mosaic where there are various influences existing all together, including culture, technology, politics, and economics, among others. Given this feature, the so-called globalized legal systems require not only the implementation of international treaties, local customs or even digital regulations but also compliance with national laws[5]. As such, there are many legal sources which coexist all together.

Thirdly, the "rhizomatic law" is not only adaptive but also flexible. Therefore, it can easily adjust to new circumstances and challenges. Through flexibility, the "rhizomatic law" upholds innovation and evolution which are not restricted by the existence of principles pertaining to rigid hierarchies. In practice, there are many examples of such adaptability. To name a few, both times of pandemics and natural disasters require some emergency measures to be adopted or even informal mechanisms to be set up in order to provide both reliance and functionality[6].

Fourthly, instead of relying on a linear or top-down structure, the "rhizomatic law" opts for horizontal connections existing between different actors and levels of society[7]. Accordingly, such connections can be achieved through collaboration, dialogue and mutual influence between different actors and stakeholders. In practice, there are many examples of lobbying

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[5] See: U. Sieber (2010). Legal Order in a Global World – The Development of a FragmentedSystem of National, International, and Private Norms –. *Max Planck Yearbook of United Nations Law Online*, *14*(1), 1-49. https://doi.org/10.1163/18757413-90000048; H. Lindahl (2020). "Chapter 7: Globalisation and the concept of legal order". In *Jurisprudence in a Globalized World*. Cheltenham, UK: Edward Elgar Publishing. Retrieved Mar 2, 2025, from https://doi.org/10.4337/9781788974424.00015; H. Marcos (2023). From Fragmented Legal Order to Globalised Legal System: Towards a Framework of General Principles for the Consistency of International Law. *Athena: Critical Inquiries in Law, Philosophy and Globalization*, *3*(1), 90-124. https://doi.org/10.6092/issn.2724-6299/17223.

[6] See: H. Szemző, J. Mosquera, L. Polyák & L. Hayes (2022). Flexibility and adaptation: Creating a strategy for resilience. *Sustainability, 14*(5), 1-19.

[7] See: M. Bruncevic, *Fixing the Shadows...*, p. 37.

groups, including social movements, grassroots organizations and even civil society which have the impact on legal debates and outcomes. They can achieve their goals based on advocacy, protests and lobbying.

Finally, the "rhizomatic law", likewise a rhizome plant, grows both dynamically and non-linearly[8]. This entails those new legal ideas, practices and even institutions emerge organically resulting from these existing ones or even merge with the others. Apparently, the blockchain-based smart contracts can be classified as a new form of legal agreement. Therefore, on the one hand, they disrupt traditional contract law. On the other hand, they also integrate with it.

To sum up, the "rhizomatic law" represents an interesting approach which provides a useful tool to understand law which is more adaptable and influenced by different factors. Indeed, this is the case of law in 21st century where there is an immerse number of unpredictable situations and new technologies emerging which require to adapt interim measures to comply with such new situations and trends.

"Rhizomatic law" from China's perspective: General overview

Chinese legal system fully represents the concept of "rhizomatic law" given its unique features. Indeed, in the case of China, the legal system is a mosaic of formal codified law, informal governance and evolving social norms[9]. Therefore, the legal system represents a myriad of historical, political alongside cultural influences[10]. To illustrate, there are many traditional values, including collectivism, familial structures and social

[8] See: S. Hsu (2022). At the critical moment: The rhizomatic organization and "Democracy to Come." *Scandinavian Journal of Management, 38*(4). Retrieved from https://www.sciencedirect.com/science/article/abs/pii/S0956522122000392.

[9] See: Y. Peng (2010). When formal laws and informal norms collide: Lineage networks versus birth control policy in China. *American Journal of Sociology, 116*(3), 770–805. https://doi.org/10.1086/657102. Accessed 2 Mar. 2025.

[10] L.A. Di Matteo (2018). 'Rule of law' in China: The confrontation of formal law with cultural norms. *Cornell International Law Journal, 51*(2), 391–444. Retrieved from https://scholarship.law.cornell.edu/cilj/vol51/iss2/3.

harmony[11] which impacted not only legal practices but also legislation. Such cultural norms have been always interacting with formal legal provisions resulting in a unique blend of culture and law. Against this background, the Chinese legal landscape does not pertain to a singular, unified legal tradition, but is akin to "rhizome". Therefore, China's legal system is diverse and full of interwoven elements which were evolving over centuries. As such, it is worth remembering that different schools of thought influenced the Chinese legal foundations, namely Confucianism, Daoism, and Legalism. Importantly, these philosophies impacted the Chinese legal cultural by balancing moral ethics, natural order and stringent regulations. In 20th century, the legal system has been radically transformed. Along with the promulgation of the People's Republic of China (PRC) in 1949, the socialist legal framework was launched. Indeed, the Communist Party of China (CCP) plays a crucial role in shaping and directing changes regarding legal reforms in the country. Given that, we can observe intersection between law and political ideology. The aim of this article is to explore the rhizomatic nature of Chinese law through the lens of historical roots, political developments alongside cultural approach. Such an analysis would be helpful to understand the intersections of different factors which contribute to the complexity and adaptability in view of the legal system of the PRC.

Traditional Chinese Legal Thoughts and Modern Chinese Legal System: From Past to Present

To start with, it is worth mentioning that the traditional Chinese legal thought[12] was highly influenced by different philosophies, namely Confucianism[13], Legalism and Daoism[14]. Importantly, each of these schools of thought

[11] Z. Liao (2022). Decoding the puzzle: Chinese culture, familial transfers, and disputes in Western courts. *International Journal of Law, Policy and the Family, 36*(1), ebac026. https://doi.org/10.1093/lawfam/ebac026.

[12] M. Łągiewska (2022). Droit chinois traditionnel: Vision des Confucianistes et Légistes. *International Journal for the Semiotics of Law, 35*, 479–492. https://doi.org/10.1007/s11196-020-09753-2.

[13] N.S. Bui (2024). Confucian legal tradition. In M. Siems & P. J. Yap (Eds.), *The Cambridge handbook of comparative law* (256–274). Cambridge: Cambridge University Press.

[14] See more: Lee, L. T., & Lai, W. W. (1978). The Chinese conceptions of law: Confucian, Legalist, and Buddhist. *Hastings Law Journal, 29*, 1307. Retrieved from https://repository.uchastings.edu/hastings_law_journal/vol29/iss6/3.

had a different approach towards law. Despite discrepancies, these philosophies stressed the need to achieve harmony[15], balance and apply a relationality. Therefore, such principles were in line with the concept of "rhizome" where there are many interconnected networks. To name a few examples, the Confucianism gave priority to social relationships, the so-called "five kind of relations" (*wulun* 无论), and communal responsibility rather that individual rights. Pursuant to Confucian philosophy:

> "It is an attempt to display in detail the potential of harmony in society if people will only recognize the necessity of conformity to the existing social relations. The rites, as Confucius puts it, remove all perversity and serve to form men's character. They tie together the natural and social hierarchies: Heaven-Son of Heaven-Great Officers-Small Officers; father-mother-older son-younger son-daughter. The rules, however, 'do not go down to the common people'. These rules are to govern the governors; the common people, Confucius holds, cannot appreciate them, and must therefore be ordered with the rule of law"[16].

This entails that the Confucian ethics opted for holistic and relational approach. Confucianism, widely known as *rujia* 儒家[17],is considered the most important philosophy in Ancient China. Importantly, this philosophical thought influenced the traditional legal system in this country. Given the Confucianism, the social harmony is prioritized where rites-laws (*lifa* 礼法) played a crucial role. The concept of *lifa*[18] was created by three subsystems, including ritual code, penal code and customary law[19]. Accordingly,

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[15] See more: C. Li (2008). The philosophy of harmony in classical Confucianism. *Philosophy Compass, 3*, 423–435. https://philarchive.org/archive/LITPO.

[16] J. W. Freiberg (1977). The dialectic of Confucianism and Taoism in ancient China. *Dialectical Anthropology, 2*, 175–184. https://doi.org/10.1007/BF00249484, p. 184.

[17] See: S. Billioud (2007). Confucianism, "cultural tradition" and official discourses in China at the start of the new century. *China Perspectives, 2007*(3). Retrieved from http://journals.openedition.org/chinaperspectives/2033. https://doi.org/10.4000/chinaperspectives.2033. Accessed on 15 February 2025.

[18] J. Pan (2011). Chinese philosophy and international law. *Asian Journal of International Law, 1*(2), 233–248. https://doi.org/10.1017/S2044251310000354

[19] M. Łągiewska (2023) *Legal semiotics and Chinese philosophy. In A. Wagner & S. Marusek (Eds.), Research handbook on legal semiotics. Cheltenham, UK: Edward Elgar Publishing,* p. 160. See more: N.P. Ho (2017). Confucian jurisprudence, Dworkin, and hard cases. *Washington University Jurisprudence Review, 10*(1). Retrieved from https://openscholarship.wustl.edu/law_jurisprudence/vol10/iss1/5.

> "This system not only functioned independently but also somehow co-ordinately. By way of explanation, it should be stressed that Chinese philosophy mostly uses the so-called 'negative' method of metaphysics. This means that instead of a simple positive definition, scholars rather point out what cannot be defined in such a way. Therefore, with regard to *lifa*, this term cannot be described as a simple concept of *li* 礼 (understood as rites) and *fa* 法 (meaning laws). Since ancient times, the rulers were responsible for formulating rites in line with current circumstances and affairs. In other words, such a concept guaranteed that the rites and laws should be adjusted to contemporary situations"[20].

By contrast, the Legalist school of thought was based upon the force of sanctions applied for the sake of obtaining obedience and compliance with the law. Therefore, the priority was given to governance by *fa* or decrees, instead of Confucian's rule by man and *li*. This entails that the term *fa* was limited only to decree and punishment and thus represented a relatively narrow scope of application. The term *li*, in turn, was a synonym of "propriety, ethics, or moral rules of correct conduct and good manners"[21]. In addition, Confucius represented a skeptical view on the use of law and punishments without any moral rules. According to Analects,

> "If the people be led by laws, and uniformity sought to be given them by punishments, they will try to avoid the punishment, but have no sense of shame. If they be led by virtue, and uniformity sought to be given them by the rules of propriety, they will have the sense of shame, and moreover will become good"[22].

This approach emphasizes that the law, which is limited to punishment, would not create a sense of shame for those who commit crimes. By contrast,

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[20] M. Łągiewska, *Legal semiotics and Chinese philosophy*..., p. 160; see: Zeng, X., & Ma, X. (2006). A dialectic study of the structure and basic concepts of traditional Chinese law and an analysis of the relationship between *li* (ceremony) and *fa* (law). *Frontiers of Law in China, 1*, 34–52; Yu, R. (俞荣根) What is meant by *Li-Fa*? (何谓"礼法") 孔学堂, 2016(04), p. 16.

[21] S. Gao & A.J. Walayat (2020). The compatibility of Confucianism and law. *Pace Law Review, 41*, 234, 239–240. https://doi.org/10.58948/2331-3528.2028. Retrieved from https://digitalcommons.pace.edu/plr/v

[22] Confucius. (1869). *The Chinese classics: The life and teachings of Confucius* (Bk. II, J. Legge, Trans., 2nd ed.). London: N. Trübner.

they would only take actions to avoid punishments. Confucius had different goals. He preferred to build a society that actively sought the good rather than avoid legal punishment. Thus, proper education according to the principles of virtue and *li* would create the right sense of shame, leading to the self-correction of all actions and mistakes into actions of good moral character[23].

To illustrate, the filial piety (*xiao* 孝)[24] played a crucial role to maintain not only harmony but also prevent any family disputes. This concept applied to five cardinal relationships in Chinese social which laid the foundation for existing social order. Indeed, the relationship between father and son was commonly seen as the most important pursuant to the Confucian ethics. For this reason, the duties arising from the filial piety were even reinforced through law and punishments in a very strict way. Once a child insulted a parent or grandparent, he would bear a punishment in the form of strangulation. In the case of establishing a separate household or division of property by a child, even though parents or grandparents were alive, the corporal punishment would be applied to him. The situation of a parent or grandparent was completely different. If they kill the son assuming that he was unfilial or disobedient, they will get either a minimal punishment or would be exempted from a punishment at all"[25]. Importantly, this case study confirms unequal status of family member where the father benefited from higher position and was responsible for his children fate without any restrictions.

Another example relates to disputes or violence arising from sibling relationships. In fact, such actions led to the disruption of family harmony and were therefore contrary to Confucian philosophy. In practice, this concept influenced legal outcomes. Thus, crimes of elder abuse, including beating or insulting an elderly sibling, resulted in harsher punishments than similar

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[23] S. Gao & A.J. Walayat (2020). The compatibility of Confucianism..., p. 240.

[24] Wang, D., Laidlaw, K., Power, M. J., & Shen, J. (2009). Older people's belief of filial piety in China: Expectation and non-expectation. *Clinical Gerontologist, 33*(1), 21–38. https://doi.org/10.1080/07317110903347771; Chow, N. (1991) 'Does Filial Piety Exist Under Chinese Communism?', *Journal of Aging & Social Policy*, 3(1-2), pp. 209-225. doi: 10.1300/J031v03n01_14.

[25] Ma, H. H. P. (n.d.). The legalization of Confucianism and its impact on family relationships. *Washington University Law Review, 65*, 674. Retrieved from https://openscholarship.wustl.edu/law_lawreview/vol65/iss4/5.

crimes against other people. This approach upholds the Confucian principle of hierarchical respect which must exist within the family[26].

Overall, legal systems in Ancient China were highly adaptive. As such, they could easily respond to current circumstances alongside local conditions by complying with changing societal needs. One must admit that such a flexibility resembles the rhizomatic features related to a constant transformation and decentralization.

Reform of "opening up" and the "Socialist Rule of Law with Chinese Characteristics" in view of "Rhizomatic law"

The PRC was promulgated on 1 October 1949[27]. After the Cultural Revolution, the process of changes was initiated by Deng Xiaoping in 1978 alongside the reforms of "opening up" (*gaige kaifang* 改革开放). This policy required the building of the entire legal system from scratch. Currently, the so-called "socialist rule of law with Chinese characteristics" exist in China[28]. Importantly, the Chinese legal system not only incorporated Western institutions and legal frameworks, but also provides a strong centralized control led by the Communist Party of China[29]. Indeed, such a coexistence of formal laws with informal norms, namely party directives and local customs complies with the concept of "rhizomatic law". Therefore, this system is recognized as a hybrid structure. Importantly, even though there is a central oversight and leadership existing in the PRC, the laws are implemented through decentralized decisions. This means that local governments and officials at provincial levels benefit from a significant

[26] Fang, X. (2012). Confucian ethics and impartiality: On the Confucian view about brotherhood. *Frontiers of Philosophy in China, 7*(1), 1-19. Retrieved from http://www.jstor.org/stable/44259369. Accessed on 2 March 2025.

[27] Luney, P. R. (1989). Traditions and foreign influences: Systems of law in China and Japan. *Law and Contemporary Problems, 52*, 129-150. Retrieved from https://scholarship.law.duke.edu/lcp/vol52/iss2/7.

[28] See also: Lam, C. K. N., & Goo, S. H. (2015). The intrinsic value of Confucianism and its relevance to the legal system in Hong Kong and China. *The Chinese Journal of Comparative Law, 3*(1), 175--189. https://doi.org/10.1093/cjcl/cxu021.

[29] See: Shaffer, G., & Gao, H. S. (2020). A new Chinese economic law order? *Journal of International Economic Law, 23*(3), 607-635. Retrieved from https://ink.library.smu.edu.sg/sol_research/3918. Accessed on 12 February 2025.

discretion in implementing laws adopted by the Chinese legislature[30]. In practice, it creates a complex web where there are various interactions and interpretations akin to rhizomatic patters. In addition, the authority fulfils its role not only horizontally but also vertically.

Chinese reality is also highly influenced by informal norms and pactices. The so-called *guanxi* 关系[31], widely known as personal connections, still plays a crucial role in this country. Indeed, the Chinese society stresses the significance of informal networks[32] which have an impact on shaping both legal and social outcomes. In practice, such networks function beyond formal legal structures. In the case of decision-making process, a judge Wang divides *guanxi* into three different categories such as emotional, mixed and instrumental. The first one is very often the closest relation[33]. Furthermore, "Chinese judges do not live in a vacuum. In courts they are judges, but the moment they take their robes off, they are husbands, wives, colleagues, supervisors, subordinates, classmates and relatives […]. judges are ensnared in all sorts of *guanxi*, which in turn find ways to influence their judicial decisions"[34]. In view of rhizomatic concept, *guanxi* are seen as horizontal and non-linear connections commonly spread within the Chinese society.

Lastly, even nowadays, the Confucian philosophy has a significant influence on law in the PRC. To illustrate, the law of the People's Republic of China on the Protection of the Rights and Interests of the Elderly[35] was first adopted in 1996 and last amended in 2018. According to Article 1 of this law, it was adopted "in order to protect the legitimate rights and interests of the elderly, develop the cause of ageing and carry forward the Chinese

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[30] See: Donaldson, J. A. (2017). Introduction: Understanding central-local relations in China. In *Assessing the balance of power in central-local relations in China* (pp. 1-18). Abingdon: Routledge. Retrieved from https://ink.library.smu.edu.sg/soss_research/2032. Accessed on 10 February 2025.

[31] Z. Liao (2022). Decoding the puzzle…,.p. 4.

[32] See more: Wang, P. (2014). Extra-legal protection in China: How guanxi distorts China's legal system and facilitates the rise of unlawful protectors. *British Journal of Criminology, 54*(5), 809-830.

[33] He, X., & Ng, K. H. (2017). "It must be rock strong!" Guanxi's impact on judicial decision making in China. *The American Journal of Comparative Law, 65*(4), 841-871. https://doi.org/10.1093/ajcl/avx041; see: Wang, X. (2015). Touguo Mianzi De Guanxian Kongzhi—Yi Duofang Shengcunxing Zhihui Boyi Wei Jichu [The cases "guanxi" network overcontrol through face-saving—Based on game of survival wisdom of multiple parties]. *Xiangjiang Falv Pinglun [Xiangjiang Law Review], 12*, 249-265.

[34] He, X., & Ng, K. H. (2017). "It must be rock…, p. 2.

[35] 中华人民共和国老年人权益保障法. (2021, October 29). Retrieved from https://www.gov.cn/guoqing/2021-10/29/content_5647622.htm. Accessed on 2 March 2025.

nation's virtues of respect, care and assistance to the elderly". The law provides that the elderly refer to all citizens over the age of 60 (Article 2). In addition, under Article 3, "the elderly have the right to material assistance from the State and society, the right to social services and social preferential treatment, and the right to participate in social development and share in the fruits of development. It is forbidden to discriminate against, insult, abuse or abandon the elderly". Indeed, the Article 18 of this law is enshrined in Confucian values. Therefore, "Family members should take care of the spiritual needs of the elderly and should not neglect or abandon the elderly. Family members who live apart from the elderly should visit or greet the elderly frequently".

In view of the judgment of the Chinese people's court in Wuxi, a woman was obliged to visit her 77-year-old mother at least once every two months. Aside from providing a financial support, children are also intended to take good care of their parents and thus prevent them from a lonely feeling. This case refers to the "filial piety" which is rooted in Confucian philosophy. Therefore, it implies to be "good to one's parents and fulfilling one's duty to take care of them"[36].

Conclusion: Future of Chinese legal system

In the case of China, "rhizomatic law" should be seen through the lens of the complexity and dynamism of the legal system. Obviously, the Chinese legal framework is based on the intersection and interplay of formal laws, informal norms and cultural traditions. Although there is a centralized authority, namely the leadership of the Communist Party of China, all these factors interpenetrate to create a unique mosaic and distinctive socio-political context. Therefore, China's legal system is a good example of "rhizomatic law" in action. Given its unique characteristics, it is worth noting that it cannot be classified as a completely rigid or purely rule-based system. Rather, it is a fluid, interconnected and adaptive framework. The example of family law in China and the rights of the elderly confirms that Confucian values are still important. Notably, "filial piety" is even recognized in the

[36] *BBC. (2013, July 2). Chinese court orders woman to visit mother. Retrieved from https://www.bbc.com/news/world-asia-china-23127936. Accessed on 17 February 2025.*

law. Given China's history and socio-cultural background, it does not seem that there would be much change in providing a completely different approach to the law in the future. As such, the "rhizomatic" concept will continue to fit the Chinese reality perfectly.

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Navigating the Rhizomatic Revolution in E-Healthcare Access in France in the Post-2021 Era

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ABSTRACT

France's healthcare system is undergoing a significant digital transformation, exemplified by the Health Ségur initiative, which focuses on the digital revolution. This shift is revolutionizing access to medical information, improving efficiency, and streamlining healthcare processes. Emphasizing patient-centric care, this evolution integrates advanced technologies like telemedicine and AI diagnostics, reflecting a global trend towards technologically enhanced healthcare. This transformation not only promises more efficient and accessible healthcare but also marks a step towards a future where digital innovation is fundamental to effective healthcare delivery and legal compliance.

KEYWORDS

Digital Health Transformation, Rhizomatic Healthcare, Health Ségur, E-Healthcare Accessibility, Data Security & Compliance, Telemedicine & mHealth, Digital Divide

1. Rhizomatic Healthcare Transformation

This paper delves into the transformative impact of digitization on France's healthcare system, with a particular focus in the post-2021 era marked by the pivotal Health Ségur initiative. The paper explores the nuances of digitization and digitalization within the healthcare sector, emphasizing their roles in shaping a more efficient, patient-centric, and technologically advanced system. Drawing on the philosophical concepts of Deleuze and Guattari, it examines the rhizomatic nature of this digital transformation, highlighting how interconnected, non-hierarchical structures reshape healthcare delivery and management. The paper also addresses the critical issues of data security, patient privacy, and compliance within digital health platforms like "My Health Space." Furthermore, it scrutinizes

the challenges of accessibility and the digital divide, particularly for individuals with disabilities and older adults. Finally, the paper contemplates the future prospects of ensuring inclusive healthcare access in France, recognizing the potential risks and benefits of this digital shift. This exploration offers a holistic view of the digital revolution in healthcare, reflecting on its implications, challenges, and future directions.

2. Digitization's Impact on Healthcare in France

The digital revolution has fundamentally transformed the landscape of healthcare in France, operating much like a rhizome that tends to territorialize or deterritorialize, revolutionizing how medical data is managed and accessed. This transformation, marked by the advent of digitization, has brought about a seismic shift in the industry. Healthcare professionals and patients now enjoy rapid and secure access to crucial information, courtesy of digital platforms. This enhanced accessibility has significantly improved the efficiency of healthcare delivery, streamlined coordination among healthcare stakeholders, and empowered patients with readily available information. The advantages of digitization span various facets, including enhanced decision-making, improved communication among professionals, and active patient engagement.

The Health Ségur, a pivotal event in France's healthcare system in 2021,[1] emphasized the necessity of reinforcing the sector through various measures, notably accelerating digital transformation. It aimed to address challenges faced by healthcare professionals, enhance patient care, and lay the groundwork for substantial investments in digital health infrastructure. This push underscored the critical role of technology in modernizing healthcare services, aligning with the global trend towards digital integration in healthcare systems in Europe.[2]

Within this digital transformation, the concepts of digitization and digitalization play crucial roles. Digitization involves converting analog data into digital formats, while digitalization represents a broader integration

[1] https://www.smart-rx.com/images/Livre-Blanc-Segur-du-numerique-pour-les-officines-Smart-Rx-Digital.pdf

[2] https://health.ec.europa.eu/ehealth-digital-health-and-care_en

and utilization of digital technologies to transform processes and systems. These concepts display characteristics akin to the rhizomatic nature of a constantly evolving network as "transformational multiplicities".[3] The synergy between these concepts in healthcare goes beyond mere data conversion; it encompasses leveraging technology to innovate and enhance healthcare delivery, ultimately reshaping healthcare into a more efficient, patient-centric, and technologically driven field.

The ongoing digital revolution in healthcare signifies the immense potential of technology to redefine patient care, optimize workflows for healthcare providers, and reform entire healthcare systems, all within the rhizomatic nature of constant transformation within the semiotic chain. This semiotic chain is defined as:

> "a tuber agglomerating very diverse acts, not only linguistics, but also perceptive, mimetic, gestural, and cognitive".[4]

In this context, the notion of a "tuber agglomerating" implies that the semiotic chain, or the process of communication and signification in healthcare, gathers and consolidates diverse forms of communication and meaning-making. It encompasses not only language and text but also perception, imitation, gesture, and cognition. This multifaceted approach to communication within the healthcare context highlights the complexity and richness of the semiotic chain, which is further enhanced by the ongoing digital revolution.

This transformation is not only about enhancing efficiency but also about fundamentally improving outcomes, experiences, and accessibility for all stakeholders involved in the healthcare journey. The rhizomatic and multifaceted nature of the semiotic chain allows for a more comprehensive and inclusive approach to healthcare communication and meaning-creation, ultimately benefiting patients, healthcare providers, and the entire healthcare system.

[3] See Deleuze & Guattari (1987, 32)
[4] See Deleuze & Guattari (1987, 28).

2.1. Rhizomatic Transformation: Healthcare Digitization in France

In the context of France's healthcare digitization, particularly with the Health Ségur initiative,[5] we can observe a rhizomatic transformation, a concept drawn by Deleuze and Guattari's philosophy.[6] This transformation reflects a non-hierarchical, interconnected approach to the evolution of healthcare systems through digitization.

In this rhizomatic transformation, the "substances"[7] of the healthcare system – such as medical data, healthcare infrastructure, human resources, and technological tools – are not constrained by traditional linear or hierarchical structures. Instead, they interact in a more networked, interconnected manner. For example, medical data is no longer confined within individual departments or physical files but is accessible across various nodes in the network, including different healthcare providers, patients, and administrative bodies.

"Forms"[8] in this rhizomatic landscape – such as data management protocols, regulatory frameworks, healthcare processes, and digital interfaces – do not impose rigid structures on the substances. Rather, they serve as guidelines or maps that can be navigated in multiple ways. This flexibility allows for more adaptive and responsive healthcare practices, where the flow of information and decision-making can take various paths, much like the multiple roots of a rhizome.

The process of territorialization, deterritorialization, and re-territorialization[9] in this rhizomatic model is less about imposing order and more about facilitating connectivity and adaptability.[10] For example, the territorialization of medical data in electronic health records is not solely about digitizing information but also about creating a network where these data can flow more freely and accessibly.[11]

Deterritorialization occurs when these networked structures break down traditional barriers, such as those between different healthcare departments

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[5] https://www.has-sante.fr/upload/docs/application/pdf/2019-07/rapport_analyse_prospective_20191.pdf

[6] See Deleuze & Guattari (1987, 32–45)

[7] See Deleuze & Guattari (1987, 63)

[8] See Deleuze & Guattari (1987, 62–67).

[9] See Deleuze & Guattari (1987, 73–78).

[10] https://www.zeendoc.com/nos-conseils/dematerialisation-des-donnees-de-sante/

[11] See L'Usine digitale (2021).

or between patients and providers. This leads to a more integrated and patient-centered approach to healthcare, where information and care can be coordinated across various points in the network.

Re-territorialization in this context involves the creation of new, more flexible and adaptive structures. These may include new collaborative platforms, integrated care models, and innovative data security measures that reflect the interconnected and dynamic nature of the healthcare system.

This rhizomatic transformation in healthcare digitization, therefore, represents a significant departure from traditional, hierarchical models of healthcare delivery and management towards a more fluid, interconnected, and adaptive system. It is a transformation that aligns with the evolving needs and possibilities of the digital age, promising improved accessibility, efficiency, and patient-centered care in the French healthcare system.

Digitization has brought about significant changes in administrative management within the healthcare industry. It has enabled meticulous tracking of medical records and examination reports, a transformation that has been embraced by healthcare professionals. This digital shift prioritizes centralized and secure data storage, while maintaining strict confidentiality regulations. Specialized softwares play a pivotal role in ensuring the security of healthcare data. Through data encryption, they ensure the highest level of confidentiality, even during email communications. Moreover, the Health Data Host (HDS) system[12] adds an extra layer of security to healthcare data systems, guaranteeing compliance with confidentiality and data protection regulations. It simultaneously reshapes the landscape of data, both in terms of territorialization and deterritorialization, ensuring functional adequacy to meet professionals' needs, fostering coordination, and promoting multidisciplinary collaboration, while efficiently managing operations. One noteworthy aspect of this comprehensive approach to digitization in healthcare is the enhancement of efficiency and security in medical data management. Additionally, it guarantees adherence to legal standards, facilitating improved coordination and collaboration among healthcare professionals.[13]

Patient care reaps substantial benefits from digitization, as it tends to deterritorialize the traditional boundaries of healthcare delivery.

[12] https://www.zeendoc.com/nos-conseils/dematerialisation-des-donnees-de-sante/

[13] https://esante.gouv.fr/offres-services/label-esante/solutions-labellisees

The integration of administrative and detailed medical information into the e-health card streamlines access to crucial patient data, empowering general practitioners with comprehensive insights into medical histories, examination results, and treatment protocols. This seamless digital transition facilitates medical prescriptions by providing physicians with essential medication details and optimizes the management of operating rooms and emergencies. As a result, it significantly improves e-health coordination and efficiency.

2.2. Ensuring Secure and Compliant Access: Monitoring "My Health Space"

"My Health Space" (Mon Espace Santé)[14] in France is a digital platform designed to provide individuals with secure access to their personal health information and medical records. It is part of the broader digital transformation efforts in the French healthcare system aimed at improving patient access, convenience, and engagement. Monitoring of "My Health Space"[15] includes the following measures:[16]

1. Data Security and Encryption: The platform employs robust security measures to protect sensitive health information. Data is encrypted both in transit and at rest to prevent unauthorized access.
2. User Authentication: Secure authentication methods, often involving multi-factor authentication, ensure that only authorized individuals can access their health records.
3. Audit Trails: Detailed logs of user activities, including interactions, access, and modifications of health data, are maintained with timestamps and user identification for monitoring purposes.
4. Compliance with Health Data Regulations: "My Health Space" is designed to comply with France's strict healthcare data regulations, including the Health Data Host (HDS) certification.
5. Regular Security Assessments: Ongoing security assessments and audits identify and mitigate vulnerabilities to protect against data breaches.

[14] https://www.monespacesante.fr

[15] https://esante.gouv.fr/strategie-nationale/mon-espace-sante

[16] https://www.zeendoc.com/nos-conseils/dematerialisation-des-donnees-de-sante/

6. User Support and Education: Users are provided with guidance on how to use the platform securely, protecting their login credentials, and recognizing phishing attempts.
7. Data Backups and Recovery: Regular data backups ensure data integrity and the ability to restore data in case of technical failures.
8. Access Control: Strict access control mechanisms limit access to authorized healthcare professionals and individuals with a legitimate need.
9. Data Privacy Measures: The platform adheres to data privacy principles, giving users control over who can access their health records and providing transparency on data usage.
10. Compliance Checks: Regulatory bodies or third-party auditors may periodically assess the platform's compliance with data protection and security standards.

Monitoring "My Health Space" is crucial to maintain trust and confidence among healthcare providers and patients. By implementing robust security measures, adhering to data privacy regulations, and conducting regular assessments, the platform can continue to offer secure and convenient access to health information while minimizing the risks associated with handling sensitive medical data.

2.3. Rhizomatic Insights into Digital Healthcare Transformation

The concept from Deleuze & Guattari's philosophy adds an intriguing perspective to the discussion of the rhizomatic nature of digital healthcare transformation. According to them,

> "the material or machinic aspect of an assemblage relates not to the production of goods but rather to a precise state of intermingling of bodies in a society, including all the attractions and repulsions, sympathies and antipathies, alterations, amalgamations, penetrations, and expansions that affect bodies of all kinds in their relations to one another."[17]

[17] See Deleuze & Guattari (1987, 111).

In the context of digital healthcare transformation, this perspective aligns with the idea that healthcare is not just about isolated components but about the complex web of interactions, relationships, and exchanges among these components. The rhizomatic network of digital health solutions reflects these intermingling dynamics, including the attractions and repulsions (such as the adoption and resistance to new technologies), sympathies and antipathies (collaborative efforts and conflicts within the healthcare system), alterations (changes and adaptations in response to evolving needs), amalgamations (integration of various technologies and data sources), penetrations (accessibility and sharing of healthcare information), and expansions (the continuous growth and evolution of digital healthcare services).

The advent of digital transformation in healthcare, especially when the COVID-19 pandemic began, has brought about a significant shift with almost 80% increase.[18] Similar to the interconnected and adaptable nature of rhizomatic networks, this transformation has reshaped the landscape. Critical to this transformation are Hospital Information Systems (HIS), which serve as vital nodes. They facilitate seamless connections among diverse healthcare professionals and break down traditional silos, enabling a general practitioner in a clinic to collaborate effortlessly with a hospital surgeon. This interconnectedness enhances overall patient care and efficiency by bridging communication gaps.

"Telehealth", a dynamic branch of e-health, exhibits characteristics reminiscent of rhizomatic networks. Telemedicine, one aspect of telehealth, allows healthcare professionals to deliver medical services remotely. Platforms like the Doctolib application exemplify this approach, enabling online medical appointment scheduling and consultations. The 2010 decree outlines five distinct rhizomatic acts within telemedicine: teleconsultation, tele-expertise, medical telemonitoring, medical tele-assistance, and tele-regulation.[19]

"mobile Health" (mHealth) is another rhizomatic facet of telehealth. It encompasses a wide range of medical and public health practices supported by mobile devices, including mobile phones, patient monitoring systems, personal digital assistants, and other wireless devices (Al Dahdha 2014). m-Health leverages the connectivity of mobile technology to enhance

[18] See Touzani et al. (2023)

[19] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000022932449/

healthcare accessibility and engagement, contributing to the rhizomatic expansion of healthcare services.[20]

The digital transition extends to various aspects of healthcare, including the dematerialization of the health insurance card. Its digital counterpart, the e-health card, is now operational in six departments in France, reflecting the rhizomatic nature of expanded digitization. Similarly, medical prescriptions issued by physicians are increasingly digitized, adopting the term "e-prescription".[21] These transitions represent rhizomatic shifts from traditional to digital forms, simplifying processes and improving accessibility.

One significant rhizomatic shift in healthcare is the digitalization of occupational health records, as mandated by Decree No. 2022-1434 of November 15, 2022.[22] These records are securely stored in digital formats for individuals under individual health monitoring in an occupational health and prevention service. This digitalization encompasses identity data, professional histories, health information collected during occupational health visits, and exchanges among various healthcare professionals, forming a rhizomatic network of information.

Within this rhizomatic network of digital records, all actions performed by healthcare professionals are logged, secured, and recorded, ensuring transparency and accountability. Individuals also have the option to exercise their right to oppose specific information within these records, preserving individual agency within the network.

Furthermore, concerning the input and consultation of the occupational health medical record by healthcare professionals responsible for individual worker follow-up are stipulated below:

- in Article L. 4624-1, these actions are conducted in accordance with the confidentiality rules specified in Article I of Article L. 1110-4 of the Public Health Code, and in compliance with electronic identification and interoperability rules defined by the references mentioned in Articles L. 1470-1 to L. 1470-5 of the same code.
- The input and consultation of information from the occupational health medical record mentioned in paragraphs 1° or 2° of Article R.

[20] https://www.apicrypt.org/files/communication/thesejdufrenne.pdf

[21] https://www.pointculture.be/magazine/articles/focus/la-sante-numerique-3-questions-alain-loute/

[22] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000046562060

4624-45-4 can also be carried out by personnel referred to in Articles R. 4623-38 and R. 4623-40, under the delegation of the occupational physician and under their responsibility, while adhering to the rules of electronic identification and interoperability as defined by the references mentioned in Articles L. 1470-1 to L. 1470-5 of the Public Health Code.

- The interoperability references mentioned in Article L. 1470-5 of the Public Health Code may be adapted to the specificities of the activities of prevention and occupational health services.
- It is important to note that all actions performed on the occupational health medical record, regardless of the author, are traced and retained within the occupational health medical record. This includes recording the date, time, and identification of the professional from the occupational health and prevention service involved in the action [my translation].[23]

In this ever-evolving rhizomatic landscape of digital health solutions, the inherent interconnectedness and adaptability of these technologies persistently reshape healthcare, going beyond established structures and boundaries.[24]

3. Accessibility Challenges in Healthcare Digitization

In the rapidly evolving landscape of digital health solutions, there is significant potential for reshaping healthcare delivery. However, this transformation comes with its own set of challenges, particularly in ensuring equitable access for individuals with disabilities. The adaptability and interconnectedness of digital health technologies, while promising, can inadvertently lead to disparities in access to essential healthcare services and information (Pinède 2022).

[23] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000046562060

[24] See Deleuze & Guattari (1987, 407–410).

3.1. Philosophical Examination of Accessibility challenges

In the context of healthcare digitization and accessibility challenges, it is valuable to explore the concepts of territorialization and deterritorialization as proposed by Gilles Deleuze and Félix Guattari.[25] These concepts provide a unique lens through which we can analyze the dynamics of digital health solutions and their impact on access to healthcare services for individuals with disabilities/impairments.

Territorialization can lead to:

- *Fragmentation of Healthcare*: The rapid proliferation of digital health technologies can lead to territorialization, where healthcare services become fragmented into isolated digital territories. Different applications and platforms may focus on specific aspects of healthcare, creating silos of information and services that are inaccessible or challenging for individuals with disabilities to navigate.[26]
- *Specialization and Medicalization*: Territorialization can also manifest as an overemphasis on specialization and medicalization in digital health solutions. While these technologies can be beneficial, they might exclude the holistic needs of individuals with disabilities, who may require a more comprehensive approach to healthcare that considers their unique circumstances.
- *Exclusive Platforms*: The territorialization of healthcare digitization may result in exclusive platforms that cater only to certain user groups, potentially leaving out those with disabilities who need integrated and inclusive solutions.

Deterritorialization, on the other hand, implies:

- *Universal Design*: Deterritorialization in healthcare digitization can be achieved through universal design principles. By designing digital health platforms with accessibility in mind from the outset, developers

[25] See Deleuze & Guattari (1987).

[26] https://www.essenburgh.com/en/blog/fragmented-care-the-causes-and-what-we-can-do-about-it/#:~:text=Fragmented%20care%20occurs%20when%20different,regulations%2C%20data%20management%20and%20training.

can create solutions that transcend territorial boundaries and cater to a broader user base, including individuals with disabilities.[27]

- *Interconnected Ecosystems*: Deterritorialization encourages the creation of interconnected digital ecosystems where various health-related services and information seamlessly flow together. This approach can break down the barriers that individuals with disabilities often face when accessing healthcare services.[28]
- *Inclusive Data Sharing*: Deterritorialized systems promote the sharing of health data across different platforms and providers while ensuring privacy and security. This enables individuals with disabilities to have a more holistic view of their health and make informed decisions.[29]

While territorialization in healthcare digitization can lead to fragmentation, specialization, and exclusivity, deterritorialization promotes universal design, interconnected ecosystems, and inclusive data sharing, ultimately fostering greater accessibility and inclusivity, especially for individuals with disabilities.

3.2. Legal Frameworks for Ensuring Accessibility in Healthcare

One of the primary challenges lies in the accessibility of digital health platforms themselves. Many of these solutions are designed with standard user interfaces that may not adequately consider the needs of individuals with disabilities. For instance, individuals with visual impairments may struggle to access information presented through visual graphics or interfaces lacking screen reader compatibility. Similarly, those with motor disabilities may face difficulties in navigating touch-based interfaces or using traditional input devices.

The rapid pace of innovation in digital health can outstrip the development of accessible solutions. As new technologies emerge and gain widespread adoption, it becomes increasingly important to ensure that they are inclusive

[27] https://esante.gouv.fr/sites/default/files/media_entity/documents/dns_inclusion-by-design_penser-linclusion-numerique-des-services-publics-numeriques.pdf

[28] https://ue.esante.gouv.fr/sites/default/files/2023-09/Feuille-route-230907_ENG_PAP.pdf

[29] https://www.has-sante.fr/upload/docs/application/pdf/2010-03/guide_dm_gb_050310.pdf

and accessible to all. Failure to address these issues can result in individuals with disabilities encountering barriers to accessing critical healthcare information, services, and telemedicine appointments.

It is important to remember that accessibility, in the broad sense, is first and foremost a fundamental right of citizens declared by the United Nations in December 2006 with the Convention on the Rights of Persons with Disabilities,[30] especially when it states that:

> "(c) Re*affirming* the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment without discrimination […]
> (e) *Recognizing* that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others […]".

So, communication should remain accessible, and apps and companies should ensure that they provide equal access to all individuals, as expressed in Art.2 of the United Nations Convention on the Rights of Persons with Disabilities:

> "Communication" includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology" [31]

Furthermore, the French Equal Rights and Opportunities Act of 2005[32] imposes legal obligations on a range of entities, including public and private organizations, with the goal of ensuring equal rights and opportunities for all individuals, regardless of their background or characteristics. These obligations encompass various aspects of non-discrimination, equal employment

[30] https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf
[31] https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf
[32] https://accessibilite.numerique.gouv.fr/obligations/champ-application/

opportunities, accessibility, and reporting. Compliance is therefore essential to avoid legal redress.

Since June 23, 2021, mobile applications must comply with the General Accessibility Improvement Repository (RGAA) in France. However, for the technical method, since the RGAA does not define it for mobile applications, the European Directive 2016/2102 applies:[33]

> "(2) In the context of this Directive, accessibility should be understood as principles and techniques to be observed when designing, constructing, maintaining, and updating websites and mobile applications in order to make them more accessible to users, in particular persons with disabilities."

This means that mobile applications must adhere to the accessibility standards outlined in the Harmonised European standard EN 301 549[34] and follow the accessibility declaration model specified in the implementing act.

3.3. Challenging the Digital Divide in French E-Healthcare

The digital divide in France's e-healthcare landscape is significantly influenced by age-related challenges. Older adults, often less adept with digital technologies, face substantial hurdles in accessing online healthcare services. This demographic, already vulnerable due to age-related health issues, confronts additional disadvantages when navigating digital healthcare platforms. The complexity and unfamiliarity of these platforms exacerbate existing health inequalities, as older individuals struggle more than their younger counterparts to access critical health information and services online (Aubouin 2022).

Another crucial aspect of the digital divide relates to individuals with impairments. Whether physical, sensory, or cognitive, these impairments can make digital interfaces difficult, if not impossible, to navigate. This inaccessibility results in further marginalization from essential health services.

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[33] https://eur-lex.europa.eu/eli/dir/2016/2102/oj

[34] https://www.etsi.org/deliver/etsi_en/301500_301599/301549/03.02.01_60/en_301549v030201p.pdf

In a world where digital solutions are increasingly becoming the norm in healthcare, these barriers represent a significant obstacle to equitable healthcare access for people with impairments.

Socio-economic factors also play a pivotal role in the digital divide. Lower-income families and individuals often lack the financial means to afford necessary technology and internet access, both of which are crucial for utilizing e-health services. Moreover, a lack of educational background can impede the effective use of these digital tools. The intersection of financial and educational limitations creates a formidable barrier to accessing digital healthcare, further widening the gap between different socio-economic classes.

Data security and privacy concerns add another layer of complexity to this issue. Many users, particularly those less familiar with digital technologies, harbor fears regarding the safety of their personal and health data. These concerns are more pronounced among older adults and those with limited digital literacy, who may not fully comprehend how their data is protected or the safety measures in place. The healthcare sector's handling of sensitive information, if compromised, could have severe consequences, reinforcing reluctance towards digital healthcare.

Addressing these fears is crucial in closing the digital divide in e-healthcare. It involves implementing robust cybersecurity measures and educating users about data protection. Transparency in data handling and clear communication about privacy policies can help build trust among users, while providing options for them to control their data and understand their rights can empower them to use digital healthcare services more confidently. This approach is key in mitigating fears related to data security and encouraging wider adoption of e-health services across various demographics in France.

The French government has initiated programs to address these issues, improving rural internet access, providing computers to disadvantaged students, and offering digital skills training. Collaborative efforts with telecommunications companies and internet service providers are also essential to provide affordable solutions and expand network coverage. These disparities are viewed through a normative framework that perceives inequality as unjust, conflicting with principles of equality.[35]

[35] See Granjon (2009, 22).

4. Ensuring Inclusive Healthcare Access in France: Further Prospects

The dematerialization of healthcare in France indeed signifies a transformative shift in medical data management and patient care. This evolution brings with it the promise of improved efficiency and access to healthcare services. However, it is crucial to consider the broader implications of this shift, particularly in terms of its impact on different social status.

As healthcare increasingly adopts digital technologies, there is a growing concern that individuals from lower socioeconomic backgrounds may not have equal access to these advancements. This potential digital divide poses a significant risk of creating or exacerbating disparities in healthcare access and quality. Such a scenario could lead to a widening gap between different social groups, counteracting the benefits of digitalization in healthcare.

To effectively navigate this transition, it is necessary to adopt a multifaceted approach. This includes the development of inclusive digital strategies that ensure equitable access to technological advancements for people from all socioeconomic backgrounds. It also entails significant investment in cybersecurity measures to protect sensitive medical data and uphold patient trust in the healthcare system.[36]

Proactively addressing these challenges will enable France to fully capitalize on the benefits of digital healthcare. This approach ensures that the advantages of digitalization are realized equitably and securely, enhancing patient care and efficiency while safeguarding the right to healthcare for all citizens, irrespective of their social status or digital proficiency. As the healthcare sector evolves, continuous vigilance and adaptation will be vital in ensuring that healthcare remains accessible and equitable in the digital era.[37]

[36] See La Perrière (2023).

[37] https://ue.esante.gouv.fr/sites/default/files/2023-09/Feuille-route-230907_ENG_PAP.pdf

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Articles are submitted to a double-blind peer review procedure. Therefore, the texts must not contain any mention allowing the personal or professional identification of the author.

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The texts should be single spaced; italics should be used instead of underlining (except for URL addresses); citations, figures and tables shall be inserted into the text, not at the end of the document as attachments; authors must consider and are responsible by all copyright law concerning the article, including figures and tables; the bibliographic citations and references must conform to the styles provided by APA Standards (American Psychological Association).

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