

UNDECIDABILITIES ~~AND~~ LAW

THE COIMBRA JOURNAL
FOR LEGAL STUDIES

**Rhizomatic Law in Motion:
Mapping Law across Fluid Frontiers**

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Rhizomatic Law in Motion: Mapping Law across Fluid Frontiers

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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 différences, 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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undecidabilitiesandlaw](http://impactum-journals.uc.pt/undecidabilitiesandlaw)

EDITION

COIMBRA UNIVERSITY PRESS
Imprensa da Universidade de Coimbra
Email: imprensa@uc.pt
URL: http://www.uc.pt/imprensa_uc
<http://livrariadaimprensa.uc.pt>

DESIGN

Carlos Costa

PRINTING

KDP

ISSN

2184-7649

E-ISSN

2184-9781

DOI

10.14195/2184-9781_6

© MAY, 2026

**COIMBRA UNIVERSITY PRESS
UNIVERSITY OF COIMBRA
INSTITUTE FOR LEGAL RESEARCH
(FACULTY OF LAW)**

The coordination by IJ/ UCILeR of this publication is being held as part of the project 'Societal Challenges – Autonomy and Limits of Law' of the University of Coimbra Institute for Legal Research (funded by FCT – Foundation for Science and Technology – Project UIDB/04643/2025 – <https://doi.org/10.54499/UID/04643/2025>).

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Editorial

Reimagining Law through the Rhizome – Fluidity, Fracture, and Forward Movement

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ABSTRACT

Law is reconceptualized through the combined lenses of rhizomatic theory and legal semiotics as a fluid, decentralized, and continuously evolving process rather than a fixed, hierarchical system. Emphasizing multiplicity, rupture, and interconnectedness, this perspective frames legal meaning as contingent and co-produced through dynamic interactions among institutions, communities, technologies, and cultural contexts. It highlights how legal phenomena unfold across non-linear temporalities and hybrid governance spaces, where authority and legitimacy emerge relationally rather than from centralized structures. By integrating insights from diverse domains—ranging from public policy and digital

communication to restorative justice and crisis response—this approach exposes the limitations of rigid doctrinal frameworks in addressing contemporary global complexity. Law is thus understood as a performative and participatory practice, shaped by interpretive acts, symbolic exchanges, and shifting social realities. This orientation advances a flexible and adaptive jurisprudence that embraces uncertainty, pluralism, and transformation, positioning law as an open-ended process of becoming across boundaries and contexts.

KEYWORDS

rhizomatic law, legal semiotics, legal pluralism, decentralization, complexity, interpretation

At a time of accelerating societal complexity, driven by global crises, digital transformations, and normative fragmentation, the conceptual foundations of law are under renewed scrutiny. This special issue, *Rhizomatic Law in Motion: Mapping Law across Fluid Frontiers*, follows the path explored in the previous volume (*The Law's Rhizome: Tracing the Swings and Sprawls of Legal Evolution*), thus engaging this critical moment through the lens of the rhizome, a concept developed by Deleuze and Guattari (1987) to capture non-linear, interconnected, and non-hierarchical structures of knowledge and meaning. The metaphor of the rhizome offers legal scholarship a framework for understanding law not as a stable tree of doctrine, but as a proliferating network shaped by rupture, multiplicity, and contingency.

To construct this alternative jurisprudential landscape, the papers assembled here chart diverse terrains – temporal, political, digital, social,

and discursive – where law reveals itself as more complex, adaptive, and hybrid than conventional models allow.

Importantly, this rhizomatic approach is enriched by the lens of legal semiotics, which reveals law as a living system of communication – a fluid interplay of signs, metaphors, and interpretive acts rather than a closed code of fixed meanings:

“It seems a strange thing, when one comes to ponder over it, that a sign should leave its interpreter to supply a part of its meaning; but the explanation of the phenomenon lies in the fact that the entire universe, – not merely the universe of existents, but all that wider universe, embracing the universe of existents as a part, the universe which we are all accustomed to refer to as ‘the truth’, – that all this universe is perfused with signs, if it is not composed exclusively of signs”. (Peirce 1998: 394)

As emphasized in Wagner’s recent work on legal semiotics, “legal meaning is never inherent, it is made,” shaped by time, space, culture, and human experience (Wagner, 2025). This understanding aligns powerfully with rhizomatic thinking, demonstrating that law is not a static institution, but an open-ended discourse negotiated across contexts and communities.

Furthermore, this perspective illuminates the complexity of interpreting legal meaning in a pluralistic, globalized world. Legal signs, far from universal, are culturally situated and mediated by shared norms, values, and experiences. The same legal term may carry divergent connotations depending on linguistic, societal, or systemic context, revealing law’s multilingual and multisystemic character (Wagner & Marusek, 2023). These semiotic insights offer a vital complement to the rhizomatic framework by emphasizing how meaning travels, adapts, and sometimes resists across legal boundaries.

Together, the rhizome and semiotics point toward a model of law as a dynamic, decentralized, and performative process, constantly in motion and perpetually reconstituted through interpretation, representation, and context (Wagner & Marusek, 2026). In this light, law becomes not a monument etched in stone but a conversation in flux, made meaningful through those who enact, contest, and live it (Wagner and Marusek, 2023).

1. Legal Temporality and the Fracture of Linearity

Further enriching this rhizomatic-legal dialogue, recent bio-semiotic interpretations of Deleuze's work shed light on law's autopoietic and sense-making nature. Just as biological systems generate meaning through context-dependent interaction between organism and environment, so too can legal systems be seen as dynamic semiotic processes, where law is enacted not through central authority but through distributed sense-making among legal actors, texts, and communities (Lang, 2024: 22-26).

This view draws on Deleuze's notion of 'larval subjectivity' and 'molecular perception' (Posteraro 2015), highlighting how law, like life, is emergent and situated, shaped by small-scale, iterative encounters rather than top-down control. The legal field becomes an assemblage of signs, relations, and affects – a meshwork or semiotic ecology where meanings fluctuate and subjectivities emerge relationally (Lang, 2024). As such, law may be better understood not as a fixed structure, but as a dynamic membrane – a surface of contact that negotiates inside and outside, self and world, norm and exception (Lang, 2024: 22-26).

Framed in this way, bio-semiotic insights support the rhizomatic conception of law as neither organic nor purely symbolic, but as a site of embodied cognition and distributed agency, where signs are not merely interpreted but enacted, and where justice arises from interactional becoming rather than institutional decree (Eco, 2014: 50-55; Khriapchenko, 2016).

This volume VI of *Undecidabilities and Law* begins with Marek Zirk-Sadowski and Bartosz Wojciechowski's critical reappraisal of legal history through the lens of temporal multiplicity in "Linear and Narrative Concepts of Time in the Legal History" (Zirk-Sadowski & Wojciechowski, 2026, *infra*). Rather than interpreting the development of legal systems as linear evolution or normative progress, they argue for a model that accounts for historical ruptures, cyclical regressions, and sociocultural discontinuities. This sets the stage for questioning the very epistemological structures through which law is understood and taught, destabilizing assumptions of legal continuity and progress. Social history, civic activism, and the temporality of culture shape narratives of law in ways that remind us that "law is not just a collection of rules; it's a story that shapes our lives and identity in historical and social contexts" (Zirk-Sadowski & Wojciechowski, 2026: 21-37).

This challenge to linearity naturally leads into Mateusz Klinowski's examination of post-structuralist thought and the rhizome as a philosophical alternative to traditional legal reasoning in "Rhizome and Progress in Public Policy: The Curious Case of Cannabis" (Klinowski, 2026, *infra*). Where linear models presume a foundational order, rhizomatic theory invites us to think of law as an assemblage, a network without center or origin. Klinowski's theoretical intervention critiques legal hierarchies and proposes instead a jurisprudence open to decentralization, contradiction, and fluidity. Through an analysis of the evolving context of drug policy and cannabis regulation over time in multiple sites around the world, Klinowski asserts that in the case of marijuana, the rhizome "presents a picture of the interconnected and entangled structure of factors and circumstances extended through various domains (axes) and responsible for past and present cannabis policies" (Klinowski, 2026: 39-59).

2. From Theory to Framework: Constructing a Flexible Jurisprudence

The rhizome, as Deleuze and Guattari argue, resists capture: it embodies the middle, the 'between', privileging connectivity and multiplicity over fixity (Lawley, 2005: 37). Lawley emphasizes this in his organizational application, noting that rhizomatic activity disturbs bureaucratic and segmentary structures through 'permanent inventiveness', a kind of micro-resistance that parallels Deleuze's micropolitics of desire (Lawley, 2005: 39).

Moreover, the dynamic interplay between molar (rigid) and molecular (supple) lines provides an evocative framework for rethinking legal structures, not as totalizing systems but as hybrid terrains, where formal institutions co-exist with emergent, bottom-up processes of legal becoming (Lawley, 2005: 40-42; Wagner, 2026a). This resonates with the juridical rhizome the editorial seeks to foreground; not law as a sovereign architecture but as an ongoing, situated negotiation of force, sense, and resistance.

Lawley's analysis underscores the epistemological risk of reducing the rhizome to a static metaphor or managerial structure. He cautions that such arborification, transforming the rhizome into a linear model, diminishes its creative and connective force, foreclosing its potential for continual reconfiguration and emergence (Lawley, 2005: 36-38).

Further deepening this conceptual engagement, Anne Wagner's development of the "Doctrine of Flex Law" builds directly on this post-structural foundation by offering a normative framework that transforms theoretical abstraction into applied semiotic and legal reasoning (Wagner, 2026, *infra*). By drawing on legal semiotics in "The Doctrine of Flex Law: A Dynamic and Rhizomatic Legal Framework", Wagner repositions legal interpretation as a dynamic, culturally situated practice. Her work reinforces the argument that law must be capable of adapting, not only to technological and political changes but also to evolving social sensibilities. The rhizome, here, is not a metaphor but a method of legal change itself, bottom-up, plural, and uncontainable by traditional categories of reform or revolution.

3. Legal Communication, Public Trust, and the Power of Networks

This rhizomatic mode of transformation also informs how law communicates with the public. Jiaxin Xing and Youping Xu in "Being All Ears to Netizens: Information Disclosure in Chinese Police Notification on Weibo." In their analysis of Chinese police notifications on Weibo, explore the tension between state authority and citizen engagement in digital public spheres (Xing & Xu, 2026, *infra*). Their study reveals how law, when projected through rigid top-down communication, fails to establish legitimacy. Instead, it is within rhizomatic, dialogical interactions between citizens and institutions that legal meaning and trust are co-produced. Xing and Xu's study "highlights the utility of rhizomatic frameworks in analyzing the decentralized, fluid, and interconnected nature of digital public communication" (Xing and Xu, 2026: 81-105) in interactions involving law enforcement and the public.

This insight fluidly transitions into Moira McMillan's reflection on the suspension of @realDonaldTrump from Twitter in "January 8, 2021: Twitter Suspends @realDonaldTrump Permanently" as a case that illustrates the blurred boundaries between public authority, corporate governance, and normative enforcement (McMillan, 2026, *infra*). Like Xing and Xu, McMillan identifies law not as a sovereign declaration but as a discursive negotiation shaped by platform rules, user networks, and symbolic performance. McMillan examines the perpetuation of algorithmic injustice

in the face of law and argues that “rules mediate risk and disappointment in a way that tolerates, or may promote, harm in some cases” (McMillan, 2026: 107-128). In both instances, legal authority emerges as contingent upon its relational embeddedness in a broader communicative ecology. In online settings, legal communicative powers can be fleeting.

4. Decentralized Justice and the Expansion of Legal Possibilities

From communication to justice systems, the rhizome continues to shape alternative legal imaginaries. Chiara Scivoletto and Benedetta Polini apply this framework to restorative justice and its intersection with domestic violence responses in “Restorative Justice and the Intertwining Between Criminal Mediation and Domestic Violence Victims’ Support” (Scivoletto & Polini, 2026, *infra*). Their findings underscore the inadequacy of rigid, punitive models for addressing the relational and emotional realities of violence. Instead, they advocate for a rhizomatic justice—grounded in victim-offender-community dialogues—that is more responsive to lived experience and less reliant on formal proceduralism. The assemblage of responses to domestic violence enabled through restorative justice approaches rather than retributive justice approaches is promising, as “ultimately, RJ (restorative justice) continually fluctuates between the general and the specific, between the macro and the micro, between theory and practice, and, most of all, between the victim and the offender” (Scivoletto & Polini, 2026: 129-160).

This approach to alternative meaning-making is mirrored in Marcel Danesi’s investigation of conspiracy theories and pandemic denialism in “Pandemic Denial and the Great Reset Conspiracy Theory: The Power of Semiotic Inter-Codability.” (Danesi, 2026, *infra*). Danesi conceptualizes these as semiotic rhizomes – networks of rhetorical, visual, and narrative codes that resist centralized debunking. Danesi’s contribution expands the relevance of rhizomatic theory from jurisprudence to information ecosystems, where law must grapple with narrative complexity, symbolic instability, and epistemic fragmentation. In analyzing and deconstructing denial discourses, Danesi considers the inter-codability inherent to the current infodemic crisis as diffused power that leads to, among other things,

a warping of people's minds through a redirecting of sinister falsities. Danesi asserts "if the hidden meanings of nefarious discourses are not tackled head on, then the real danger is that historical amnesia will emerge, leading to an inability to recognize the recycling of hate-based codes" (Danesi, 2026: 151-171).

A similar challenge to centralized legal reasoning is explored by Maria João Antunes, Sónia Fidalgo, Miguel João Costa, and Ana Pais in "Criminal Law and the Covid-19 Pandemic in Portugal" (Antunes et al., 2026, *infra*). Antunes, Fidalgo, Costa, and Pais document how the Portuguese criminal justice system struggled to adapt its rigid legal categories during the COVID-19 pandemic. They highlight how reliance on offences like "disobedience" exposed systemic limitations in addressing public health crises through conventional legal tools, calling for a more nuanced, responsive criminal policy. As a warning, Antunes, Fidalgo, Costa, and Pais suggest that "history has shown repeatedly that exceptional political contexts fertilise the ground for overly punitive approaches and pave the way for permanent individual rights restrictions" (Antunes, Fidalgo, Costa & Pais, 2026: 173-198).

5. Theory Meets Practice: Disagreement and Dialogue in Rhizomatic Systems

To close the issue, Daniel Green and Januś C. Varburgh offer a reflective and dialogical examination of rhizomatic theory's applicability in legal and managerial practice in "Debating Rhizomatic Theory in Hospitality Management" (Green & Varburgh, 2026, *infra*). Their staged disagreement between a legal linguist and a hospitality manager brings theory into direct contact with institutional realities. While the legal scholar defends multiplicity and openness, the practitioner demands clarity and coherence. This tension mirrors one central to the driving question: How can rhizomatic thinking reconcile with the practical need for order? The debate itself is rhizomatic—non-linear, multidirectional, and generative—and is itself an assemblage of the ways the rhizome is questioned, advanced, and challenged in its multiplicity.

6. Conclusion: Toward a Jurisprudence of the Rhizome

Together, these papers reveal law as a living, fragmented, and interconnected process—one that can no longer be captured by models of linear development, formal authority, or hierarchical classification. Whether examining constitutional change, digital governance, or restorative practices, each contribution foregrounds law's multiplicity and contingency. The rhizome, then, is not merely a metaphor; it is an emergent epistemology, a method, and a praxis.

As legal practitioners and scholars, embracing rhizomatic jurisprudence invites us to resist reductive closure, to delve into complexity, and to trace law's unfolding across cultural, technological, and political terrains. In doing so, we move not toward chaos, but toward a more honest jurisprudence; one attuned to the ways law is made, remade, and resisted in the unpredictable spaces between structure and flow.

Acknowledgements

Our sincerest gratitude goes to all the contributors to *Rhizomatic Law in Motion*, whose work forms a vibrant constellation of perspectives across jurisdictions, disciplines, and cultures. Each contribution demonstrates that law does not evolve in isolation but through dialogue—through encounters between languages, traditions, and lived experiences. In this sense, the rhizome is not merely a theoretical lens; it reflects the very process through which legal knowledge circulates, transforms, and acquires meaning across contexts.

From Anne: On a more personal note, we wish to dedicate this volume to my father, Henri-André Wagner. From him, I learned that knowledge is never static nor owned—it is transmitted, reshaped, and carried forward across generations and cultures. The cross-cultural spirit of this issue echoes that inheritance. If law is a living discourse, it is because it is sustained by those who pass ideas onward, allowing them to take root in new terrains.

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Zirk-Sadowski, M., & Wojciechowski, B. (2026). Linearity of the History of Law (infra, in this volume: 21-37).

Thematic core

Linear and Narrative Concepts of Time in the Legal History

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DOI | 10.14195/2184-9781_6_1

ABSTRACT

This chapter considers a specific dimension of the issue of time in Law, namely the one that explores temporality of culture (and law as a part of that culture). Distinguishing between linear and non-linear concepts of Time, the authors try to present arguments related to the criticism of the linear approach to time in historical processes. They describe non-linear concepts in the philosophies of historical time. They refer to the transcendental concepts of time in the view of I. Kant and E. Husserl, presenting

their effects on the philosophy of history. That is why they outline the existential approach to time in the philosophy of M. Heidegger, in order to finally refer to the non-linear concept of history in M. Foucault's approach. Ultimately, they highlight the emergence of non-linear legal phenomena in contemporary democracies and this as a decisive factor to mobilize narrative discourse.

KEYWORDS

physical time, linearity of time, time in narrative, history of law, chronicles of law

1.

The issue of time in law can be presented in two dimensions. The first considers how law organizes time by answering the question of how legal frameworks are maintained through time¹. This often revolves around the problem of continuity in legislation and the endurance of law over time. According to Hart's positivism, the durability of law relies on the existence of primary rules within a political community, upheld through continuous practice of law by state officials. This temporality of law is more evident in precedent-based reasoning². Meanwhile, in specific branches of law, the issue of time arises in the application and interpretation of legal norms, which depend on the passage of time. A classical example of this is the problem of statutes of term of prescription³.

¹ See Postema (2015: 40; 2004: 203-26)

² See Postema (2015: 45).

³ See Piątek (2018).

The second issue related to the concept of time concerns the temporality of culture and law as a part of that culture. This is the problem that our subsequent reflections are dedicated to, typically falling within the considerations of various approaches to legal history.

The question of cultural temporality and the representation of law within it immediately leads to inquiries into how time is understood in the humanities, particularly whether the concept of physical, linear time is sufficient here. The problem of linearity in historical time is broad, and in this work, we can only outline some of its aspects. We hope these initial reflections will serve as a foundation for deeper studies on this topic. We believe that in different historical schools studying law, various concepts of time coexist.

2.

The primary and dominant category is linear time. Thinking about linear time is based on the belief that everything happening develops continuously and uniformly, aiming toward some goal. Imagine history as a huge tape where each event is linked to the previous one and leads to the next. According to this concept, time is like a straight line—there's no chance of going back to the past or jumping to the future. Everything that has happened is irreversible and unchangeable. This approach is commonly accepted in historical narratives because it helps us understand how events and changes in society evolve over time. Most history textbooks, including those on legal history, are based on such a concept of historical transitions. Linear time is always associated with beliefs in progress or at least meaningful development. The linearity of time aiming at some goal is deeply rooted in Western culture and tradition, particularly in a Judeo-Christian way of thinking. Even in the Bible, human history is described as a continuous development from the creation of the world by God to the final judgment and salvation. A similar approach can be found in many other religions and philosophies, where history is viewed as a linear process moving towards a specific objective.

In historiography—the study and interpretation of history—linear time is regarded as a key category in creating historical narratives. Historians aim to analyze past events by looking at their causes and effects and how

they influenced the further development of history. This linear perspective, at least seemingly, allows us to better grasp how historical processes evolved over time. However, it's important to remember that not all historians and philosophers agree with this linear concept of time in history. Some propose alternative approaches, such as concepts of cyclical history or theories of nonlinear time development. For them, history can be more complex and complicated than a simple timeline, and different events and processes may have more intricate relationships and influences on each other. Despite this, linearity remains one of the dominant ways of thinking about the development of humanity and its journey through time.

Although history is often viewed as a continuous development and evolution leading to increasingly advanced forms of society and culture, the linear concept of time in history can lead to simplifications, often overlooking more complex dependencies and relationships between events. Sometimes, certain events may be marginalized if they don't fit within the established narrative of linear progress.

3.

The same goes for the history of law. The linear concept of time here pertains to the continuous and uniform development of legal systems. However, the history of law is more complicated than a simple timeline and can be shaped by various factors such as social, political, economic, and cultural changes. In some legal systems, the evolution of law can be observed in a linear manner, as legal changes occur gradually, leading to increasingly complex and organized systems. For instance, in Roman law, one can trace the evolution from customary law to written law, eventually leading to statutory law. However, in other instances, the history of law can be more complex, with many deviations from a simple line of development. In some legal systems, changes may result from revolutions, reforms, or interactions between different legal systems. Various cultures and legal traditions can influence the shaping of law in a non-linear manner.

4.

The history is shaped by diverse factors often exceeding the linear framework of time. There are numerous such phenomena.

Firstly, changes in social and demographic structures can significantly impact the development of law and lead to significant legal reforms, adapting the law to new social realities. Sometimes, there is a regression back to concepts that appeared to have been discarded, seen as a backward step. A good example comes from criminal law, where there is a retreat from the most humane punishments and an expansion of penalization to phenomena not previously included.

Secondly, political decisions and actions can shape the law in various ways. Politics can have positive effects, for example, through legislative reforms, or negative and retrogressive effects through interference with judicial independence.

Thirdly, wars, social conflicts, and revolutions can lead to violent changes in legal systems. Such changes are often revolutionary and not always consistent with previous linear legal development.

Fourthly, contemporary globalization and cultural exchange impact the law, leading to the adaptation of regulations to international standards and patterns. Law is becoming increasingly transnational, and there is a certain cyclicity in the progression of historical events.

Fifthly, the advancement of technology and science presents new challenges for the law. For instance, the development of information technology requires new regulations regarding personal data protection and cybersecurity. Technological progress and changes in the information society pose new challenges, such as regulations concerning cybersecurity, privacy protection, or accountability for online content. These are entirely new issues that have no historical counterparts and are surprising for all civilizations and cultures that emerged during historical development. Recently, the emergence of so-called artificial intelligence (AI) based on neural networks is recognized as a phenomenon for which we are unprepared, and which will probably lead to a total transformation of humanity's way of life and change its fundamental institutions, including law.

These diverse factors shape the history of law in ways that are not always linear and uniform. One can perceive this attribute of law only through theoretical models.

Complexity is not always a result of specific facts. Socio-cultural factors also significantly influence the development of law, often not following a straightforward path. The evolution of values, norms, and social attitudes can lead to changes in law. For instance, changes in beliefs regarding gender equality, environmental protection, or human rights often require legal adjustments. Conflicts between different social groups, e.g., class, ethnic, cultural, or religious, can lead to legal reforms that adapt the law to the needs of various groups, making it more inclusive or exclusive depending on the context. The currently widespread phenomenon of civic activism and the emerging social movements can change the law by influencing public opinion and thus exerting pressure on politicians.

All these factors shape the history of law in ways that are much more complex than simple linear development. Legal historians must consider these diverse aspects to fully understand how law has evolved over the centuries.

5.

In particular, a revolutionary situation starts the history of law from a new zero point. According to Hannah Arendt, revolutions have the capacity to create a new beginning⁴. They are moments in which it is possible to reject the old order and establish a new, more just system. This is possible because a revolution always creates a new public space where citizens can freely debate and participate in political life. Political freedom and the ability to participate in governance are crucial for it.

The essence of these phenomena is precisely the abandonment of the accepted development direction in a given culture. These are phenomena usually cited as the most important disruptive factors in the linear development of law. Contemporary globalization and cultural exchange also impact the law, leading to the adaptation of regulations to international

⁴ See Arendt (1990: 43).

standards and patterns. The law is increasingly transnational. The phenomenon of migration has always introduced new challenges associated with multiculturalism and the transnational nature of many social issues. This often necessitates a radical retreat of law from many cultural achievements. Finally, the development of technology and science presents new challenges for the law. Today, the rapid development of AI embodies this challenge. The suddenness and complexity of this phenomenon mean that we cannot refer to any historical experiences in legal regulations and integrate them with existing legislation and case law.

The breakdown of linearity is particularly felt in democratic societies, which perceive the linearity of legal history primarily through the expansion of individual freedoms in an active civil society. A phenomenon that frequently contradicts the linearity of history is significant changes in concepts of human freedom. The expansion of freedom through the elimination of social exclusion often occurs parallel to the dominance of agonistic discourse in social life, especially in the political sphere. Hopes for progress, for pro-freedom changes, often have to be dashed in light of new inequalities that arise from these hopeful historical events.

6.

The main factor contributing to the emergence of nonlinear legal phenomena in today's democracies is the increased role of the aforementioned civic activism in social life. The phenomenon of the so-called silent majority has essentially disappeared. Beyond political institutions, which typically propose gradual legal development through evolution, there arise, at specific moments in history, external to those institutions, new definitions of the boundaries of civil liberties indicated by informal or semi-legal activist organizations. This contributes to increased social participation, protection of individual rights, and promotion of social changes. In poorly defined crises—economic, social, or political—the actions of activists can force legislative reforms that better reflect social understandings of freedom and promote new versions of social justice previously absent in the law. These reforms often aren't based on existing laws but are compelled through the processes of law application, where judges also feel the emergence of

new definitions of particular freedoms and the limiting function of existing legislative solutions.

Civic activism plays a key role in the process of shaping law, influencing changes in the legal system and promoting legislative reforms. Due to the methods employed by social activist organizations, legal changes can take even their proponents by surprise. In democratic societies, this also triggers discontinuities in political elections, which interrupt previously introduced changes in law. Civic activists strive to influence the legislative process and legal reforms through communicative methods, rarely employing instrumental actions.

The predominance of communicative actions over instrumental actions means that the essence of the historical process becomes the creation and understanding of meanings, rather than events in the physical sense⁵. The process of replacement has been observed roughly since the Enlightenment, which produced meanings used during the Great French Revolution. Current historical processes often rely solely on communicative behaviors, thus disrupting communication and inducing cognitive errors in opponents.

7.

The rejection, or at least the weakening, of the cognitive role of the linear concept of time in legal history leads us to reject the thesis of eternal progress primarily triggered by the passage of time within a reality of intelligent beings. Today, Francis Fukuyama embodies such a conviction⁶. His main thesis asserts that with the collapse of communism and the end of the Cold War, liberal democracy and capitalism have become the final point of political and social evolution. He argues that after reaching liberal democracy, humanity will no longer seek other political systems, as liberal democracy best satisfies human needs for freedom and equality. He claims that history, as a battle of ideologies, has concluded, since there are no longer competing alternatives to liberal democracy that could lead to fundamental changes in global political structures.

⁵ See Arendt (1990: 43).

⁶ See Fukuyama (1992, chapters. 4 and 5).

Fukuyama's theory has faced criticism of various sorts. Some critics argue it is overly optimistic and does not consider the possibility of a resurgence of authoritarianism, populism, or other political forms that may compete with liberal democracy. Contemporary events, such as the rise of nationalism and populism in various parts of the world, suggest that history may be more complex and dynamic than Fukuyama anticipated. However, it's crucial to emphasize that Fukuyama does not imply that historical events will cease to occur. Conflicts, changes, and issues will continue to arise, but according to his theory, they will not lead to the emergence of new ideologies capable of replacing liberal democracy.

At first glance, this seems to be a pessimistic thesis, rejecting progress in a liberal or Marxist sense. This mainly stems from the fear that rejecting absolute time, characterized by linearity, must lead to the acceptance of subjective time. An alternative to the linear approach to time is the concept of nonlinear time. The thesis of the nonlinearity of historical time suggests that it may be more complex, chaotic, or even cyclical. This perspective on history should not be confused with the unpredictability of historical events. Thanks to contemporary developments in sciences such as statistics, empirical sociology, social psychology, economics, and demography, many historical events can be predicted.

8.

It should also be noted that in historiography, the category of time itself is changing. The basis of the old approach to historical transformations was physical time, also called absolute time, whose first concept was introduced by Aristotle, who used the category of change to define time as “the amount of motion with respect to ‘before’ and ‘after’.”⁷ Time thus represented a measure of change, although Aristotle also engaged in the issue of simultaneity against the backdrop of his critique of Zeno's paradoxes regarding motion⁸.

The most serious change in the conception of time is the shift in philosophy away from physical time. Its essence does not, of course, undermine the existence of the duration of things, as its attributes are

⁷ Aristoteles (1996), books III 200b, IV 218b, IV, 219b VII.

⁸ Aristoteles 1996, end in the book IV.

considered absolute. It cannot be replaced by subjective time, which is a psychological phenomenon. However, in the humanities, this single category of time is insufficient. Today, the most serious philosophical proposal is internal time, studied within Husserl's phenomenology: "what we take here is not the existence of cosmic time, the existence of the duration of things, etc., but time appearing, duration appearing as such. And these are absolute givens, and doubting them would be nonsensical. While we do also accept some existing time (*seiende*), it is not the time of the world of experience, but the immanent time of consciousness's flow."⁹

This is not "external" time, but "internal," which does not denote a psychological time. Husserl's studies do not concern "subjective" time, meaning the subjective, personal experience of time and the imagination related to it, but rather a kind of objective forms of experience. The essence of this deliberation relies on the principle of bracketing¹⁰. The focus of phenomenology is on the data of consciousness, which must be approached without presuppositions, because consciousness—more precisely, the stream of consciousness—is for Husserl that which one cannot doubt without falling into contradiction (as Descartes already demonstrated).

Looking at our consciousness reveals its fluidity, incessant variability, which allows Husserl to adopt immanent time of its flow. Since consciousness (the stream of consciousness) is the locus of constitution for all meanings, examining the internal consciousness of time must precede any inquiry into the nature of cosmic time. The phenomenological question regarding the "origin" of time is not a genetic or empirical question but one directed toward "the primordial configurations of the consciousness of time," in which the primary differentiations of time are intuitively and properly constituted as ultimate sources of all certainties regarding time¹¹.

This approach has enabled a transcendental conception of consciousness, which was initiated by Kant and subsequently undertaken differently by Husserl. For Kant, transcendentalism meant the analysis of the necessary conditions of the possibility of knowledge, i.e., determining which structures and principles underlie human cognition. For Husserl, transcendentalism was mainly expressed in analyzing a priori structures of consciousness and

⁹ Husserl [1923 / 1989 (Polish translation): 9].

¹⁰ Buczyńska-Garewicz (2003: 25).

¹¹ Husserl [1923 / 1989 (Polish translation): 16].

experience to uncover the conditions for our understanding of the world. Both pointed to the need to analyze the “transcendental ego,” the subject behind all cognitive activities. For Kant, this “transcendental ego” is a cognitive structure organizing experiences. For Husserl, the “transcendental ego” refers to structures of consciousness and experience unveiled through the negation of all preceding assumptions. While Kant focused mainly on analyzing cognitive structures like time, space, and cognitive categories that shape how we perceive the sensory world, Husserl analyzed those structures revealed through the so-called reduction to bracketing, consciousness, experience, and cognitive acts, which aimed to unveil the foundations of our understanding of the world. For Kant, the focus was on cognitive structures, while for Husserl, the focus was on the structures of consciousness revealed through phenomenological analysis. This provides sufficient reason to move away from the concept of absolute time. We do not exist in a vacuum, and this allows for a philosophically justified transition to attempts at constructing another conception of time, which would not be possible without critiques of concepts of time unlinked to the category of consciousness. This seems to align more closely with the concepts of the humanities, which cannot exist without the category of subjectivity and consciousness.

This need is largely fulfilled by Heidegger’s existentialism. In „Being and Time,” Heidegger contemplates time in the context of the question of being of existence (Dasein)¹². Representation of existence is impossible without temporality. As Hanna Buczyńska-Garewicz emphasizes, “being-in-the-world,” “care,” “anxiety,” “project,” “being-toward-death”—these are all concepts describing different aspects of experiencing temporal being, and understanding time is derivative of the reality of “temporal being”¹³.

9.

Therefore, it can be said that at another stage of reflection on internal time, history becomes an element of knowledge impacting subjectivity and identity. Time in this perspective is not a uniform order. Besides the subject,

¹² See Heidegger (2010: 316).

¹³ See Buczyńska-Garewicz (2003: 35).

there emerges the phenomenon of the diversity of temporal practices and the role of narratives in the construction of temporality.

10.

The most intriguing aspects of these issues were highlighted by M. Foucault, who analyzed time mainly in the context of social analysis, power, and discourse. Foucault presented a unique approach to analyzing history and the organization of knowledge, moving away from traditional linear historical narratives. Instead, he focused on the concepts of archaeology and genealogy of knowledge to understand how knowledge and discursive practices have been organized and developed across different epochs.

His approach concentrated on the interdependencies between time and power, as well as how time is used as a tool of social control. Foucault emphasized the heterogeneity of time and the diversity of temporal practices in various social contexts¹⁴. Time is not conceived as a uniform order but as variable, dependent on specific contexts and social practices. Foucault's analysis of time often intersected with the analysis of micro-relationships of power, examining specific practices, institutions, and mechanisms of power that influence the organization of time and daily life.

Foucault critiqued traditional linear concepts of historiography for several reasons. He criticized the lack of consideration for the complexity and diversity of history. He believed that the linear historiographical approach oversimplifies history, ignoring the complexity and diversity of human experiences and various cultural contexts. According to him, history does not follow a constant direction but is full of contradictions, conflicts, and diversity. Instead of viewing history as a simple accumulation of progress, Foucault drew attention to the mechanisms of power, social control, and how discourses shape our understanding and interpretation of history. History is open to varied possibilities and depends on power relations, struggles for authority, and changing social practices. He proposed an analysis of micro-relations of power, focusing on specific mechanisms, institutions, and practices that shape the lives of individuals and the society.

¹⁴ See Gutting (2005:29-30).

Instead of concentrating on general trends and narratives, Foucault focused on local practices of power and control. Thus, the rejection of linearity in history leads to a different distribution of focal points in historical research¹⁵.

Foucault identifies four key aspects here. First, the cyclical nature of history: in this perspective, time may be like a loop in which events recur at intervals. This view is quite popular in many cultures and philosophies that see time as an eternal cycle. Second, complex temporal relationships: in a nonlinear approach, events may be connected in a more complicated manner. Time may resemble a network where everything influences everything else. Third, temporal leaps: nonlinear time permits jumping between different moments, allowing for unconventional interpretations of history. Fourth, chaos and unpredictability: in this conception, time can be chaotic and hard to predict. Events don't have to adhere to any strict rules.

11.

From all these attempts to break away from linearity in history, a conception of time ultimately emerges as a result of seeking subjectivity through narrativity. Only narrative can lead to the discovery of subjectivity, including legal subjectivity¹⁶. A conception of time characterized by discursiveness and the lack of a unified narrative begins to take shape. Law becomes an element of this fluid modernity.

Z. Bauman describes modernity as „liquid,“ meaning that contemporary societies are characterized by constant changes, instability, and uncertainty¹⁷. In contrast to „solid modernity,“ which was more stable and predictable—thus linear—liquid modernity is characterized by transience: Interpersonal relationships, work, values, and social norms are more ambiguous. People often change jobs, partners, and lifestyles. A characteristic feature is axiological relativism. Values and norms are no longer fixed, which largely leads to the subjectivization of truths and beliefs.

Information and communication technologies play a pivotal role in shaping liquid modernity. They influence methods of interaction: social

¹⁵ See Foucault (2009).

¹⁶ See Wojciechowski (2024: chapters 2 and 3.1).

¹⁷ See Bauman (2000, chapter 3).

media and mobile technologies change how people communicate but also simplify relationships. Access to information is changing: modern society has unrestricted access to information, which leads to informational overload and difficulties in decision-making.

In this modernity, time is shaped by various discourses, particularly sets of rules, norms, and practices that define our understanding of history. For this reason, each epoch has its unique ways of perceiving the world, which influences how history is shaped and understood.

Nonlinear time gives us a different perspective on reality—more complex and multidimensional. It allows us to better understand the various possibilities for the development of events and temporal relations. Hence, Foucault proposed the method of archaeology of knowledge, which involves deconstructing the hidden structures, rules, and practices underlying historical discourses¹⁸. He thus chose different contexts for studying history as the passage of time, such as: 1) discourses of practice and power, 2) changes in power systems across epochs, 3) archaeology of knowledge, 4) the relationship between knowledge and power.

Regarding the first aspect of Foucault's research, he analyzed how power is acquired and maintained through knowledge, discourses, and social practices. His studies showed that power is not uniform and continuous; it is diffuse and operates on various levels of society. At the second point, he emphasized the importance of examining different epochs and knowledge systems that shape our worldview. Rather than treating history as linear development, he analyzed changes within various epochs and showed how knowledge is constructed and evolves over time. The third aspect of his proposed method of archaeology of knowledge involves uncovering the hidden structures, rules, and practices underlying historical discourses. Foucault challenged the uniformity and continuity of historical time, suggesting that history is more complex and multidimensional. The fourth context was the study of the relationships between knowledge and power and how these relationships shape history and society. His analyses showed

¹⁸ See Webb (2013: 120-143).

that knowledge is often leveraged as a tool of power and social control, leading to complex and sometimes contradictory historical processes.

12.

In conclusion, we propose that the historicity of cultural phenomena, including legal ones, is slowly being replaced by the chronicles of law. Just like in the period dominated by oral cultures, law happens in narrative. Liquid modernity replaces the linearity of time with narrativity.

The chronicles of law refers to the idea that law is a dynamic phenomenon that evolves over time in response to changing social, political, economic, and cultural conditions. The chronicles emphasize that law is not a static set of norms but rather a process shaped by various factors and historical events. In this context, law is viewed as a product of history, developing within a specific historical context. This narrative-based perspective on law may serve as a source of identity built through the narrativity of culture. Such a perspective on the temporality of law allows for building an existential reference of law to its subject¹⁹. Within this narrative dimension, a close relationship emerges between the existential experience of legal normativity and the recognition of the law's validity in its current form. This opens a chance to establish a narrative „historical consciousness of the past” of the law²⁰.

Conversely, the historicity of law focuses on the facts and circumstances that shape law at a given moment in time. Historicity indicates specific events, social changes, and processes that influence the shaping and interpretation of legal norms. This approach emphasizes that law is closely intertwined with particular moments in history and that its understanding requires an analysis of the historical context in which it was created.

The chronicles of law and historicity of law are, of course, closely interconnected. Chronicles of law indicates the unpredictability of changes in law, while historicity provides the specific context in which these changes occurred. The unpredictability and suddenness of changes lead M. Foucault

¹⁹ In Poland, an example of such a holistic approach to the temporality of law is J. Zajadło (2019; 2019a).

²⁰ See Gadamer (2013: XIV).

to propose applying the category of genealogy in seeking the meaning of the history of law²¹. Genealogy is a more dynamic and critical research tool that examines how various practices, norms, and institutions influence the formation of knowledge and power. Genealogy does not assume a linear development of knowledge. Instead, it investigates how specific historical situations and „contingent” events contribute to the creation of a new order of knowledge and structures of power.

In the narrative of time, the history of law isn't just a collection of rules and legal acts; it's a story that shapes and reflects individual lives within society. The narrative around the law, intertwined with cultural events, influences the identity of legal subjects and the role of law in their existence.

Narrative plays a fundamental role in shaping our understanding of the world, and law is no exception. From a narrative perspective, law becomes not just a set of principles but a story about human relationships, conflicts, and the pursuit of justice. Paul Ricoeur asserts that narrative allows us to grasp the complexity of human experience and situates our actions within a broader temporal context²².

In the context of law, narrative uncovers its dynamics and evolution over time, revealing how legal norms respond to social and cultural changes. When viewed through the lens of time, law becomes more comprehensible, and its application fits more appropriately into the realities of everyday life. This approach allows for the construction of identities of legal subjects, who are not just passive recipients of regulations but active participants in the process of creating and interpreting laws²³.

Moreover, the identity of legal subjects is shaped by their interactions with the legal system and through the narratives that circulate in society. In the literature of Kafka, Camus, and Dostoevsky, various aspects of this interaction are revealed. Literature, especially from these authors, enriches our perspective on law more than legal texts do, illustrating its connections to human experience, morality, and culture. Law, in their works, reflects social tensions and conflicts that impact individual lives.

Law, as a system of norms, does not exist in isolation. Its development and interpretation are closely linked to cultural and social events. Narratives

²¹ See Koopman (2013).

²² See Ricoeur (1984: 31-32).

²³ See Wojciechowski (2024: 101-137).

illustrate how law can serve as a tool for both oppression and justice, making its role in the lives of legal subjects complex and multifaceted.

Thus, the history of law, seen as a narrative, allows for a deeper understanding of its role in social life and in shaping the identity of legal subjects. Law is not just a collection of rules; it's a story that shapes our lives and identity in historical and social contexts.

However, it should be emphasized that relationships between the concept of the chronicles of law and the historicity of law is complex but fundamental for understanding the dynamics of legal systems. The chronicles of law are inextricably linked to the historicity of existence, which provides context and specifics for this process. Contemporary studies of law should account for both aspects to understand how law functions and adapts to changing social realities.

In summary, the chronicles of law which are a kind of a story and the history of law differ in their approaches to the category of time: the chronicles of law focuses on evolutionary processes and dynamics of changes in law, while the history of law emphasizes specific events and the historical context in which law operated. Both approaches are complementary and can mutually enrich research on law, offering different perspectives on understanding its evolution and functioning.

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Rhizome and Progress in Public Policy: The Curious Case of Cannabis

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DOI | 10.14195/2184-9781_6_2

ABSTRACT

This paper examines the role of the rhizome as a framework for the analysis of public policy and argues that it offers a more adequate way of understanding cannabis regulation than the widely used pendulum metaphor. The pendulum image suggests cyclical movement between prohibition and liberalization and is often used to describe drug-policy change. However, the legal and social history of cannabis shows that such a model is overly simplistic. Cannabis regulation has developed through the interaction of multiple legal, medical, political, economic, and cultural factors operating across different domains and levels of governance. This multidimensional

and non-linear pattern is better captured by the rhizome metaphor, which does not presuppose a single axis of movement, a privileged explanatory order, or a deterministic trajectory. By showing that the rhizome provides a more accurate account of cannabis-policy development and a more fruitful basis for interpretation and prediction, the paper also defends the practical applicability of the concept in legal and socio-political analysis and suggests that the rhizome may contribute to progress in policy science.

KEYWORDS

rhizome, sociopolitical pendulum, public policy, drug policy, policy science, cannabis regulation, post-structuralism, legal evolution, medical marijuana

I. The concept of rhizome

“Rhizome” is a botanical term derived from the Ancient Greek word *rhízōma* (ρίζωμα), literally meaning “mass of roots” and commonly translated into English as “rootstalks”¹. The term refers to the functional underground parts of certain plants like lotus, ginger, or turmeric. However, in philosophy, its usage is not due to these plants’ well-known culinary applications, but rather because of its metaphorical potential. The concept of the rhizome is an example of a metaphor derived from the physical structure of a specific object (in this case, part of a plant). It is the physical form of a dense,

¹ Encyclopedia Britannica (2025).

maze-like network lacking a visible hierarchical order or central node that makes the rhizome an especially valuable metaphor for describing social phenomena.

The metaphor itself was proposed by two French thinkers, Gilles Deleuze and Félix Guattari, who were influential in European philosophy during the late 20th century². Their work explored alternatives to *structuralism*, which at the time was the dominant intellectual paradigm in philosophy and the social sciences, premised on the idea of organizing phenomena into systems and hierarchies that reflect logical or causal relationships. Inspired by their literary engagement with the writings of Franz Kafka, Deleuze and Guattari proposed non-hierarchical and decentralized modes of analyzing human experience and social reality³. According to them, a rhizomatic narrative does not follow a linear progression but rather evolves in a complex, decentralized, multifaceted, and non-directional manner. A rhizomatic narrative, when employed in social analysis, allows for multiple perspectives, none of which can claim to be the singular or authoritative interpretation of the whole.

What began as a study of Kafka's unconventional literary style and narrative structure evolved into a broader critique of hierarchical theories of social systems. This critique, in turn, led to the formulation of a framework for the philosophical analysis of social phenomena: one consisting of theories and interpretations of reality that are not bound by assumptions of unified structure, hierarchical order, or a privileged vantage point (*the post-structuralist program*). The central point of this critique is that the assumption of a hierarchical and linear order in social reality is both oversimplified and inaccurate.

The selection of the rhizome as a metaphor was also intended as a counterpoint to the image of the tree (or root), which has long been entrenched in classical and medieval philosophy and subsequently carried over into modern science and structuralist thought. The tree metaphor remains

² The term "rhizome" was first introduced in their 1975 book on Kafka (Deleuze & Guattari 1986) and was further developed in the 1980 essay *Mille Plateaux* (Deleuze & Guattari 1987). In the latter, based on the rhizome metaphor, the authors proposed a novel methodology for practicing philosophy and analyzing reality. Currently, the rhizome metaphor proposed by the authors is often characterized as a model for the unfolding of philosophical thought (Krtolica 2021).

³ This proposal was made plausible thanks to Kafka, who demonstrated that a non-linear, non-hierarchical narrative still constitutes a coherent story. Why, then, could one not construct a coherent social theory in a similar manner? Theory is, after all, a kind of narrative.

familiar in fields such as physics and logic, appearing in interpretations of quantum mechanics (e.g., the “possible histories” model; Belnap et al. 2022) and semantic models for temporal logic (e.g., “branching time” semantics; Prior 1967). For Deleuze and Guattari, the rhizome metaphor served as an imperative to challenge the tree metaphor and, by extension, the foundational assumptions of structuralism.

The rhizome has also been interpreted as a metaphorical description of systems (*assemblages*) that are complex, non-hierarchical, and interconnected across scales and domains. Its development into the broader concept of *assemblage* (Delanda 2006) has influenced a range of post-structuralist scholarship – from literary theory and psychology (Sermijn et al. 2008) to organizational studies (Lawley 2005), and even, perhaps unexpectedly, to microbiology (Landa et al. 2024) and defense studies (Weizman 2006). The concept has been directly applied, for example, to explain social movements (e.g., Funke 2012) and the processes of knowledge production in the social sciences (e.g., Seijo 2005). In all of these domains, the rhizome and assemblage frameworks have proven useful for exploring the non-linearity and self-organization inherent in systems of a certain type.

As a method of philosophical inquiry and a general principle of understanding social reality, *the rhizome* can also be understood as an epistemic tool that enables researchers to resist reductionist explanations of social systems and their dynamics. From the perspective of post-structuralist theorists, replacing the tree/root metaphor with that of the rhizome represents a conceptual innovation (or, more specifically, a conceptual invention) – an intellectual shift that liberates social science from the presupposition of hierarchy, direction, or any predefined structure in constructing knowledge. However, it is important to note that since its inception, the rhizome concept has been criticized by some authors as a setback in social theory. Specifically, the program and methods of post-structuralism have been accused of fostering pseudo-science in the controversial critique by Sokal and Bricmont (1999).

Despite such controversies, the post-structuralist paradigm has found its way into legal studies (e.g., Cornell et al. 2006), including applications of rhizome-like or assemblage-like concepts (e.g., Riles 2000). Both concepts are particularly relevant to understanding legal systems and their evolution, especially given the persistent uncertainty surrounding how legal systems function and are structured. For decades, the dominant view depicted legal

systems as hierarchically organized networks of norms – arranged vertically and horizontally according to their origin, content, or function – with legal dynamics understood as the top-down propagation of information. Such a model naturally assumes the existence of a single source of authority. Although this view may appear compelling at first glance, scholars in jurisprudence have increasingly acknowledged that law operates as a complex system, whose evolution is neither linear nor predictable. Legal norms are not reducible to mere logical derivations; instead, legal dynamics are shaped by a multitude of interconnected factors that extend into ethics, politics, and broader social contexts. These forces operate within network-like matrices lacking strict hierarchies or confinement to specific domains. Hence, an approach that does not presuppose linearity, hierarchy, or homogeneity may better align with the reality of how law functions⁴. In particular, the concept of the rhizome may be relevant to modelling progress in public policy and transformations in the underlying regulations.

II. Evolution of public policies and the idea of progress

Intuitively, public policy is often portrayed as subject to a monotonic process of improvement. For example, Lindblom (1959) presents public policymaking as a series of small, logical steps that gradually lead to improvement – hence the term “incrementalism.” Hall (1993), by contrast, views public policy as a product of knowledge-based adaptation, which results in consecutive, cumulative transformations rather than in continuous growth. However, in many cases, policies and legal reforms cannot be characterized by either linear progression – incremental or cumulative. Numerous examples show that public policy often “oscillates” in response to political and societal pressures, as regulatory focus shifts between mutually exclusive values or priorities (e.g., efficiency versus safety). It is therefore reasonable to argue that, in the domain of public policy, periods of improvement are frequently followed by phases of crisis, retraction, or even decline. Consequently, several scholars have proposed alternative

⁴ The usefulness of the rhizome concept is further amplified by criticisms of alternative analytical approaches – for example, unsuccessful attempts to describe the legal system in terms of complex systems theory; see Klinowski 2009.

models of policy change that challenge the notion of monotonic progress (e.g., Baumgartner & Jones 1993).

Drug policy, encompassing the regulation of production, trade, and use of potentially intoxicating and addictive substances, is one area where this cyclical nature of public policy is particularly pronounced. The historical trajectory of cannabis regulation is especially illustrative, as societal perceptions of the plant have shifted dramatically across centuries – leading to the implementation of seemingly contradictory policies at different points in time. Even throughout the 20th century, cannabis laws oscillated between criminalization and legalization. As a result, this dynamic is frequently captured in the literature using the metaphor of a pendulum, which draws attention to the swings between opposing regulatory poles (Hartnett, 2000; Vivian 2012; Bewley-Taylor et al. 2014).

At first glance, the pendulum appears to be an effective conceptual device for analyzing changes in drug policies. It seems to clarify the evolution of policy and even to predict future developments. In this respect, the pendulum functions similarly to logical negation: during more tolerant periods, it suggests the likelihood of impending restriction, and during restrictive phases, it points toward likely liberalization. Therefore, the pendulum metaphor may seem to correspond well with historical patterns and to possess a degree of predictive power. One might thus conclude that the pendulum metaphor provides a meaningful framework for analyzing legal dynamics in the domain of drug policy – and, by extension, its introduction into policy science as an analytical tool represents an example of conceptual progress in policy studies. However, I will argue that such an appearance is misleading.

Scientific progress and the role of metaphors remain insufficiently examined in the field of policy studies. Intuitively, the former can be understood as achieving a deeper and more accurate understanding of policies and their evolution. If metaphors are viewed as potential sources of insights, then improved analysis (progress) may involve replacing one metaphor with another. Accordingly, it is legitimate to ask whether substituting the image of linear progression with the pendulum metaphor yields a better grasp of public policy – and whether a subsequent metaphor might further refine that understanding. It is also crucial to acknowledge that metaphors, while potentially illuminating, can mislead and obstruct insight (Lakoff & Johnson 2003). Thus, critical analysis of metaphorical

thinking should be regarded as an essential part of theoretical work aimed at conceptual progress.

As I will demonstrate in the following sections, the pendulum metaphor ultimately distorts our understanding of cannabis policy, while the rhizome metaphor offers a more accurate framework – one that even allows for better-informed predictions. If this claim holds, then replacing the pendulum metaphor with that of the rhizome may serve to stimulate scientific progress in the study of drug policy, offering valuable insights into the transformation of actual cannabis policies over time. Additionally, my argument may be understood as an independent assessment of the utility of a particular application of the rhizome concept – specifically, as a model for analyzing the dynamics of cannabis regulations. This, in turn, would strongly support the practical applicability of the concept in socio-political and legal analysis.

III. The brief history of cannabis regulations

Cannabis (*Cannabis sativa*) is an annual plant species belonging to the *Cannabaceae* family and contains approximately 60 chemical compounds known as cannabinoids, among which one – Δ^9 -tetrahydrocannabinol (THC) – is responsible for its intoxicating effects and some of its medicinal properties (Atakan 2012). The legal status of cannabis is a consequence of international agreements from the early 20th century, which introduced strict controls over the trade, and subsequently the production and use, of various medicinal substances, initially those classified as narcotics – such as opium, morphine, and heroin. This status was ultimately defined by the 1961 Single Convention on Narcotic Drugs, which, with minor amendments, remains in force to this day. Despite prohibitions and severe penalties associated with the cultivation, trade, and possession of cannabis, the plant became one of the most widely used recreational substances in the second half of the 20th century – a trend that continues today⁵.

The history of cannabis is remarkably complex. The plant originated in Central Asia and was initially cultivated for food and fiber. Its medicinal properties, however, were soon recognized. The earliest written records of

⁵ It is estimated that cannabis was used in the EU by 8.4% of the adult population (aged 15 to 64) during the previous year; see EUDA 2025.

cannabis's medicinal use date back to 3750 BCE in China (Fleming 1998). Evidence also suggests its use in ancient Indian medicine around 1600 BCE and in Egypt as early as 1700 BCE. Knowledge of the properties of cannabis spread from Egypt to physicians in ancient Greece and Rome. During the Middle Ages, cannabis-based remedies from Egypt entered the Middle East and began appearing in the works of Arab physicians from the 9th century CE onward. Cannabis was widely used as a soporific, analgesic (including during surgical procedures), and anticonvulsant. At that time, it was not smoked but administered orally (Russo 2007).

From the outset, cannabis was subject to regulation due to its inclusion in medicinal preparations. The standardization of such remedies was a significant concern even in antiquity. The composition of widely used remedies – such as theriac (Lat. *Theriac*) and its precursor mithridate (Lat. *Mithridatium*) – was often established by medical treatises or herbals that were granted official authority (Rago & Santoso 2008). Regulatory practices resembling modern pharmaceutical oversight first appeared in the Arab world in the 9th century CE and were later adopted in Europe. The first European pharmacopoeia was the Edict of Salerno, issued in 1240 CE (Penn 1979).

The earliest legal prohibitions on cannabis use were politically motivated, although they were often accompanied by religious rationales. In ancient China, intoxication from cannabis was prohibited as Confucianism gained influence over Taoism (Li 1974). Ibn Taymiyyah, a jurist and conservative Sunni theologian of the 13th-14th centuries, condemned the use of cannabis for intoxication (Nahas 1985). State regulations prohibiting the cultivation of cannabis in royal gardens in Cairo were issued during the reign of Sultan As-Salih Ayyub (1240-1249). By the late 14th century, in territories under Ayyubid influence, the consumption of cannabis preparations was punishable by tooth extraction, and cannabis crops were systematically destroyed (Khalifa 2011). In early modern Europe, cannabis was associated with heresy and witchcraft. The plant – alongside opium and belladonna – was believed to be an ingredient in a magical ointment allegedly used by witches for flying. This belief appears in the 1615 writings of the Italian physician and demonologist Giovanni De Ninault (Abel 1980).

Religious condemnation of cannabis often served as a pretext for suppressing particular social groups and ideologies. In China, Confucian doctrine was instrumental in consolidating the emperor's central authority. In the Middle East, cannabis prohibition was used to undermine the

influence of Sufism, an ascetic form of Islam that gained popularity among the lower classes (Rosenthal 2014). In Europe, accusations of witchcraft were employed by the Catholic Church to combat pagan traditions and reinforce its monopoly over healing practices, particularly among the upper classes.

The decline of medicinal cannabis use in Europe was likely driven by the Catholic Church's monopolization of official medicine and the cultural association of cannabis with superstition, witchcraft, and paganism. However, this decline would not have occurred so readily had European cannabis varieties not been selectively bred for fiber production, thereby significantly reducing their THC content. As a result, European hemp largely lost its intoxicating properties (Cappelletto et al. 2001). Despite stringent prohibitions, cannabis continued to be used widely in the Middle and Far East and in Africa.

The return of cannabis to Western medicine occurred only in the 19th century, yet this resurgence was driven not by changes in law but by medical advancements, which sought new therapeutic substances in the healing traditions and folklore of the Orient. Pioneers in the study of the properties of Oriental cannabis varieties (*Indian hemp*) included the French physician Aubert-Roche (1843), who described the effectiveness of cannabis resin during plague and typhoid epidemics in Egypt, and the French psychiatrist Moreau (1845), author of a pioneering work scientifically examining the effects of cannabis on the central nervous system. However, perhaps the most significant milestone was the work of Irish physician O'Shaughnessy (1843), based on clinical observations conducted at a hospital in Calcutta. As a result, between 1840 and 1900, more than one hundred scientific papers on the medical applications of cannabis were published in European and American medical journals, and cannabis became a popular ingredient in analgesic and soporific medications (Grinspoon & Bakalar 1995).

This historical development illustrates that the pendulum metaphor presents a highly simplified image of drug policy. Patterns of cannabis use and regulatory responses from the authorities were shaped by a diverse array of ideological, political, and economic factors. Moreover, the popularity of cannabis use often coincided with its prohibition. In such a case, the pendulum metaphor clearly misrepresents reality. For example, it does not account for how the sudden popularization of cannabis in medicine occurred in the 19th century despite the culturally entrenched negative

image of the plant and the absence of any revocation of its condemnation by social and political authorities. If the opposite positions of a swinging pendulum were meant to represent opposing positions in cannabis policy, the metaphor breaks because no physical pendulum can occupy two opposite positions simultaneously. And yet cannabis was often condemned and praised at the same time.

The pendulum metaphor implies movement within a strictly defined range and space, whereas the dynamics of drug policy follow a more complex trajectory. Moreover, historical evidence clearly suggests that drug policy operates across multiple domains, not limited to law. For example, when, in the first decades of the 20th century, the use of cannabis in medicine again began to decline, this shift was not initially accompanied by legal changes either. Cannabis disappeared from medical practice not because its use was prohibited, but primarily due to competition from synthetic medicinal products. With access to medications that were more potent and easier to dose, physicians began to treat cannabis – still prepared as a traditional herbal remedy – as an obsolete and cumbersome option (Fankhauser & Witton 2008).

Despite its declining role in formal medical practice, cannabis remained an ingredient in many popular so-called “patent medicines” (proprietary mixtures prepared by pharmacists on both sides of the Atlantic). Paradoxically, the continued presence of cannabis in these products, alongside other intoxicating and addictive substances, contributed to the growing perception among physicians that cannabis was harmful. With the introduction of legal restrictions on patent medicines in the early 20th century and their gradual elimination from the market as hazardous products, cannabis also began to disappear from commercial circulation.

We see, therefore, that the elimination of cannabis from Western medicine resulted from specific conditions within medical practice and pharmaceutical regulation concerning drug safety. In fact, prohibition, defined as legal measures forbidding cultivation, trade, and possession of cannabis, emerged later and somewhat incidentally, as a consequence of international agreements targeting other narcotics, primarily opium and morphine. Global cannabis prohibition was codified at the Geneva Conference in 1925 through the treaty signed there (*the International Convention on Narcotic Control*), whose signatories committed to adopting regulations restricting the production, export, import, sale, distribution, and use of intoxicating

substances exclusively to “medical and scientific purposes.” Among these substances – alongside opium, morphine, coca leaves, and cocaine – were the dried flowers of *Cannabis sativa* added there on the initiative of Egypt, whose authorities had long been unable to control the use and popularity of the drug among the local population.

The signing of the Geneva Convention initiated a feedback loop between national and international drug policy: national legislation drew on the convention to justify stricter domestic controls, while international regulations intensified in response to increasingly severe national policies. Within a few years, the legal distinction between cannabis and other narcotics was effectively erased, and cannabis came to be treated as equally harmful as opiates (Fijnaut & de Ruyver 2015). In the United States, with the adoption of the *Marihuana Tax Act* in 1937, cannabis was removed from the official pharmacopeia, where it had been listed since 1854 (McKenna 2014).

At both the international and national levels, early 20th-century cannabis prohibition was often justified by popular cultural narratives surrounding the plant. Particularly influential was the tale of the Order of Assassins, as described in the memoirs of the Venetian merchant and traveler Marco Polo (ca. 1254-1324) – fanatical killers who allegedly consumed cannabis to induce a murderous frenzy. This partially fabricated narrative perpetuated, for centuries, a cultural association between cannabis, mental illness, and violence. Even in the early 20th century, the story was invoked by the American popular press and by influential federal officials as justification for cannabis prohibition (Anslinger 1937). Thus, when the U.S. Congress first debated narcotic prohibition in 1911, representatives of the pharmaceutical community warned that lawmakers’ and officials’ knowledge about cannabis properties was rooted more in literary fiction than in empirical evidence (Musto 1972).

Besides international law, cannabis prohibition also originated from the activities of anti-immigration movements, which identified cannabis use with culturally foreign labor immigrants – initially from India, and later from Mexico. At one point to emphasize the alleged danger posed by cannabis smoking, the plant was even referred to as “Mexican opium” (Armstrong & Parascandola 1972). State prohibitions on smoking and possessing cannabis were designed to make life difficult for immigrants and to encourage their departure from the country. Cannabis regulations were also implemented in Brazil, the Union of South Africa, and the West

Indies, where they likewise stemmed from cultural biases and served as tools of social control in the hands of white elites (Bewley-Taylor et al. 2014).

Yet another hypothesis concerning the origins of prohibition was popularized by American cannabis activist Jack Herer (1992), who argued that a coalition of industrialists – led by press magnate William R. Hearst, who had invested heavily in wood-based paper production – sought to eliminate cannabis as a potential competitor.

As this overview shows, the nature of cannabis-related regulation was far from homogeneous. Under the umbrella term of “prohibition” may lie pharmaceutical regulations concerning drug safety, tax provisions aimed at restricting trade in certain substances (e.g., plant material), and criminal statutes directed at repressing specific social or ethnic groups associated with cannabis use. There may also be multiple, competing hypotheses regarding the genesis and purposes of cannabis prohibition. Therefore, cannabis regulation should be analyzed not only within the framework of distinct branches of law (criminal, tax, commercial, pharmaceutical), but also in relation to different domains of social life – such as law, medicine, economics, and art⁶. Hence, the rhizome metaphor, which conceptualizes social phenomena as having multiple causes and as forming part of a network of complex relationships that transcend any single domain, appears even at first glance to offer a more appropriate research perspective than the simplified pendulum metaphor typically applied to drug policy.

Moreover, the current transition from prohibition to the legalization of therapeutic cannabis use (medical marijuana) can be interpreted not merely as a consequence of shifting political will, but rather as the outcome of a paradigm shift within the medical sciences over the course of the 20th century. As it turned out, prohibitive cannabis laws were supported by physicians’ publications and official statistics. German pharmacologists Rudolf Kobert and Adam Joseph Kunkel warned of the consequences of chronic cannabis use, which they claimed led to degeneration and mental disorders, particularly in Asian and African populations. Similar assessments came from British doctors and colonial officials in Egypt and India. Although such evaluations were later discredited, they were cited in support of cannabis prohibition well into the mid-20th century (Kendell 2003).

⁶ Nineteenth-century French literature and twentieth-century American jazz, to mention only two examples, were both significantly shaped by cannabis use.

However, over the past century, medicine has increasingly aligned itself with the natural sciences – a transformation that has profoundly influenced perceptions of what constitutes valid scientific evidence regarding the harmfulness or efficacy of a given substance, and the criteria under which it may be recognized as a legitimate medication. Anecdotal accounts and the authority of practicing physicians have been supplanted by population studies and clinical trials. The evolution of cannabis’s therapeutic use – from its disappearance in early 20th-century medical practice to its widespread reacceptance in the 21st century – reflects this transformation. Cannabis has become the subject of extensive laboratory research, constituting the initial stage in the development of new pharmaceutical products. One of the leading medical research databases, PubMed, contains nearly 750 papers reporting on preclinical studies of cannabis. The total number of research articles examining cannabis properties is estimated to exceed 20,000 (Maule 2015). It was these laboratory and clinical findings that proponents of the first successful medical marijuana legalization efforts cited. In 1996, the therapeutic use of cannabis was legalized in California, followed by Oregon, Alaska, and Washington in 1998. Today, similar medical marijuana laws exist in most U.S. states and in numerous European countries.

As we see, both the decline of medicinal use of cannabis in the first decades of the 20th century, and the recent retreat from prohibition were justified by scientific evidence. What changed was the nature of that evidence – anecdotal accounts and personal authority were replaced by laboratory research and population studies in the role of sufficient condition for qualifying a substance as legitimate remedy or poison. Most importantly, this shift occurred independently of prohibition. Medical marijuana legislation in the United States, for instance, was introduced in defiance of ongoing federal prohibition. And the same dynamic can be observed in many European countries, where medicinal cannabis use is legally permitted despite general prohibition. For this reason as well, it is difficult to interpret the history and present configuration of cannabis regulation as a series of pendular swings, while remaining faithful to the historical record.

IV. Inadequacy of the pendulum metaphor

The pendulum metaphor is often employed in the context of drug policy to understand historical regulatory trends or even to predict the future. Authors use the term “sociopolitical pendulum” (e.g., Hurd 2017) to underscore the significance of the metaphor in revealing the complex, multidimensional causes of legal evolution. However, the history of cannabis regulations sketched above suggests that the pendulum metaphor is far too simple to capture their dynamics with adequate depth and complexity.

As demonstrated in the previous section, changes in cannabis policies are much more subtle than the pendulum model can adequately express. Specifically, the regulatory extremes assumed by the metaphor are not the same across successive prohibition–legalization cycles. For instance, prohibition in medieval Egypt under Arab rule was not the same as prohibition in nineteenth-century Egypt under Ottoman rule. It differed in the nature of particular acts introducing it, their content (details of regulation), as well as its efficiency and consequences. As a matter of fact, it is never possible to return to the same regulation, as the pendulum model tacitly assumes, because of the constantly changing social and cultural context of regulations and the fact, often omitted in drug policy analyses, that policy change is often path-dependent. New regulations leave residues, i.e. social institutions, expectations, new categories, commercial infrastructures, court precedents, cultural practices and prejudices. As history progresses, the pendulum is never able to return to the same point in the regulatory space in which it presumably operates because of that “sedimentation”.

Moreover, the actual history of cannabis does not consist of mere oscillations between two extremes – legalization (decriminalization) and prohibition (criminalization). In fact, cannabis was considered a valuable medicine and a condemned substance at the same time over the same area on numerous occasions throughout the centuries. Hence, to analyze the trajectory of cannabis regulations with the help of the pendulum metaphor is certainly to oversimplify it – to say the least.

Additionally, adopting the pendulum metaphor could even lend support to some false theoretical claims, for instance, that there is no real progress in the field of cannabis policy. The metaphor suggests, though, that although cannabis regulations change, their trajectory is merely circular, as they bounce back and forth in time without any advancement or refinements.

Such a conclusion is obviously false, since current regulations regarding medicinal or even recreational use of cannabis are much more developed and complex than the previous ones. For instance, they take into consideration our quite extensive knowledge on the prolonged cannabis use and its potential harmful consequences, introducing several specific requirements that cannabis products containing high doses of THC must fulfill, or limiting sales and marketing of those products. Therefore, as the history of cannabis illustrates, there is much more to the story than the image of an oscillating pendulum suggests.

It is also problematic that the pendulum metaphor leads to overly simplistic predictions about public policies that do not hold in longer timescales or a broader socio-economic perspective. Within the framework constituted by the pendulum metaphor, for instance, cannabis legalization necessarily leads to prohibition (and vice versa), since after a time of progress and liberalization (one extreme), there is a likely contraction of liberties and prohibition (another extreme). Unfortunately, such vague predictions, even if, at face value, they mean anything, seem not to have any practical importance, since one cannot deduce from them anything useful for actual policymaking. Yet, the capacity to formulate those trivial predictions seems to be one of the major reasons for the popularity of the pendulum model.

The metaphor of the pendulum is not only a filter limiting our attention and the scope of research, resulting in false beliefs and expectations. It also helps to create certain narratives that function as heuristic tools for interpreting current and future developments in drug policy regarding cannabis. For example, using the pendulum as a cognitive filter for understanding, studying, and reacting to the changing cultural image of cannabis and the regulations that follow from it, we tend to assume that they are the product of mere political or cultural forces, since the domains of politics and culture are subject to observable fluctuations that can be easily linked to changes in cannabis laws. Such an assumption may well lead to implementing ineffective public policies, as one might view cannabis policy as a field where regulatory choices are limited due to a vicious circle fueled by cultural and political struggles. In this way, the pendulum metaphor can encourage flawed scholarship and misguided policies.

Describing the evolution of drug policy through the pendulum metaphor is sometimes useful, however. If one assumes that history is the arena of struggles between opposing forces, it is easy to justify the claim that periods

of advance in any area of public policy are always followed by periods of regression. It may be sometimes intellectually convenient to describe public policies as the result of constant, repetitive struggles between progress and regress, liberal and conservative forces, or scientific and political considerations⁷, where real progress in the long run is deemed impossible. Such a picture could fit well within broader narratives about politics and the public sphere, especially when our analysis is limited to specific time, space and legal domain. The pendulum model seems to accommodate well the idea that changes in cannabis laws are driven by competing political interest groups gaining and losing political influence, or by certain fashions gaining and losing popularity. Yet, as we have seen already, the history of cannabis is an area in which numerous types of influence operate simultaneously, and it is impossible to isolate a major one. For example, in the domain of medicine, political interests, no matter their strength, may be overcome by the requirements of the scientific paradigm recognized by professionals as binding.

Consequently, it is unlikely that the pendulum metaphor, as it tends to favor oversimplistic picture of the dynamics of cannabis policies and regulations, provides a valuable tool for analyzing drug policy transformations. In that case, it is a legitimate question to ask whether any other metaphor could play a significant role in understanding this area. As I mentioned earlier, the concept of rhizome seems to provide us with a more adequate account.

V. Rhizomatic nature of cannabis policy

In the first section, I suggested that the rhizome can be understood as an epistemic tool for analyzing social reality without slipping back into simplistic explanations that assume a well-defined hierarchy or order (e.g., of causes or types of explanation), i.e. without succumbing to reductionist explanations. Cannabis regulations provide us with the case when such explanations may cloud our analysis instead of deepen understanding,

⁷ Or even as changes in the importance ascribed to evidence in the policymaking process. As the value of evidence-based policy increases, liberalization may advance, whereas prohibition tends to prevail during periods in which ideology and cultural factors dominate the public-policy domain.

simplifying the overall picture and creating false expectations. By contrast, the rhizome provides a framework for analyzing policy transformations that better accounts for the complexity of social issues. The rhizome metaphor leaves open the possibility of describing the evolution of public policies regarding cannabis in various equally important and legitimate contexts, where different types of factors could be presented as significant for explaining the actual content of regulations and their dynamics.

The rhizome neither presupposes a privileged way of describing the history of public policies nor justifies any definitive assumptions about their future trajectories. The rhizome metaphor does not allow for the determinism characteristic of pendulum swings, leaving room for far more fruitful reflection on public-policy dynamics, where causes from different domains often compete, interlink and nullify or amplify each other, resulting in largely unpredictable and unprecedented effects far from simple oscillations of a simple physical object. Therefore, the metaphor is not a source of trivial and vague predictions I mentioned in the previous section.

On the other hand, the concept of rhizome not only enables us to seek deeper explanations beyond a single area of description, but also strongly suggests that such an endeavor is necessary. This, in turn, encourages interdisciplinary inquiry addressing the complex structures of multi-domain relations entwining each of the social, political or legal issues, including cannabis regulations. The superiority of the rhizome metaphor over that of the pendulum becomes even clearer once cannabis policy is understood as a multidimensional regulatory field. Cannabis law develops simultaneously across several partly independent “axes”, including criminal law (criminalization), medical law (medical authorization), consumer-protection law (product safety, marketing, advertising restrictions), and public law (taxation, administrative control, enforcement priorities). A legal system may liberalize in one of those areas while tightening regulation in another. Cannabis is at the same time condemned in certain contexts and cherished in others. The same substance can be a medicine and an illicit drug, or a symbol of deviance and of wellness culture. The pendulum is not able to express such contradictory social qualifications. Moreover, those phenomena occur across multiple scales: international, national, regional, and often do not move in synchrony. What emerges, however, is not a simple oscillation between two poles but a series of movements along multiple axes, in which

liberalization in one aspect of control is not necessarily accompanied by liberalization in another⁸.

Moreover, cannabis policy evolves simultaneously at international, national, regional, and municipal levels. Those levels do not always align, as we already saw in the case of federal prohibition and medical marijuana laws in U.S. states. And it is the case also in many other countries, where binding international law still prohibits cannabis use, despite different forms of legalization functioning on the national, regional or even municipal level. This provides strong empirical support for describing cannabis policy through the metaphor of a multi-scalar assemblage rather than that of a unified swing. Whereas a pendulum suggests one center of motion and one axis, the picture of rhizome accommodates several partially autonomous areas of regulation interacting across scales, in which liberalization may proceed or regress independently. Consequently, in the area of studies on cannabis policy the concept of rhizome encourages, far better than the pendulum, an understanding of cannabis regulation as a heterogeneous assemblage of interacting norms, institutions, expert discourses, and social actors, thereby providing a more accurate perspective, one that may translate into better theoretical and practical outcomes. Instead of generating a fatalistic view that whatever progress occurs will eventually be undone, which may discourage institutional learning and reform design, the rhizome metaphor frames policy as capable of recombination and reform. It encourages actors to intervene at multiple nodes relevant for regulation, rather than waiting for the next swing of the imagined sociopolitical pendulum.

This allows better-informed predictions, especially because the rhizome framework directs our attention to potential multi-domain processes and institutional sites at which change is likely to emerge, such as scientific research, court decisions, patient mobilization, subculture experimentation, treaty interpretation, and so on. In this sense, the rhizome not only offers a more accurate description of cannabis policy history, but also a better guide to its future development.

⁸ In fact, sometimes liberalization alongside one axis leads to prohibition alongside the other. For example, legalization of cannabis use typically leads to more strict regulations of marketing and taxation of cannabis products, no matter their previous legal status.

VI. Conclusion

This paper is motivated by the observation that certain linguistic constructions can lead their users into cognitive, or epistemic, error. The metaphor of the pendulum influences the way we interpret the history of cannabis policy and regulations. It works as a filter, bringing to our attention those circumstances that reinforce the picture of pendulum movements. The image of a swinging pendulum helps to create certain narratives that function as heuristic tools for interpreting current and future events that constitute a policy trajectory. As it turns out, this image actually limits our understanding of the complexity of the issue and narrows our responses to cannabis-related phenomena.

Cannabis policy is not determined by a single hierarchy of knowledge or power, whether expressed through evidentiary standards or political decision-making. On the contrary, both cannabis policy and its evolution are products of a complex network of factors, which are in a constant state of flux regarding their nature, meaning, weight, and interconnections. Accordingly, cannabis policy at any given moment is the product of a shifting field of cultural and socioeconomic influences mediated by a plurality of actors, including institutions, experts, patients, and other affected groups – a picture that certainly favors the image of the rhizome as a model for cannabis public policy.

Every metaphor is, of course, a simplification and therefore produces some distortion, but we should choose those metaphors that best fit the evidence already available to us and promise the most valuable insights. This is especially important because we use metaphors as cognitive filters through which we interpret social reality and make important predictions. In the case of cannabis, the rhizome not only offers a neat botanical metaphor but also presents a picture of the interconnected and entangled structure of factors and circumstances extended through various domains (axes) and responsible for past and present cannabis policies. The rhizome framework fits cannabis history better, offering more complex narratives about it. Therefore, the history of cannabis regulation should be regarded as a strong argument for the relevance of the rhizome as a model for legal and public policy dynamics. Additionally, replacing the pendulum metaphor with that of the rhizome may even stimulate scientific progress in the study of drug policy.

Consequently, the introduction of the concept of rhizome could be interpreted as a sign of progress in our understanding of the legal evolution of cannabis regulation, and perhaps even in policy science more generally.

This publication is part of the research project 2019/35/B/HS5/02887 financed by the National Science Centre, Poland.

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The Doctrine of Flex Law: A Dynamic and Rhizomatic Legal Framework

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DOI | 10.14195/2184-9781_6_3

ABSTRACT

The Doctrine of Flex Law advocates for a dynamic and responsive legal system, tailored to adapt to the rapid societal and technological transformations of the modern world. This conceptual framework challenges the traditional static nature of laws and proposes a legal environment that is as fluid and malleable as the societal context it operates within. Drawing on interdisciplinary insights from legal semiotics, this doctrine emphasizes the necessity for laws to evolve in tandem with

changing social norms and technologies. By exploring various theoretical paradigms, the Doctrine of Flex Law highlights the potential for a more inclusive and adaptable legal system, one that not only responds to but anticipates the needs of a diverse and interconnected global society.

KEYWORDS

flex law, legal semiotics, dynamic legal systems, interdisciplinary legal studies, legal adaptability, responsive law

1. Introduction – Envisioning a Dynamic and Adaptive Legal Framework

The “Doctrine of Flex Law” presents a transformative vision for the legal landscape, advocating for systems that are dynamic, adaptable, and responsive to the rapid shifts in society and technology. This approach challenges traditional legal paradigms which typically view laws as static and immutable entities. Grounded in the contemporary and modern insights of the “*Research Handbook on Legal Semiotics*” (Wagner and Marusek 2023b), the “*Research Handbook on Jurilinguistics*” (Wagner and Matulewska 2023), “*Frege Synthesized*” (Haaparanta, Hintikka 1986), “*Legal Fictions in Theory and Practice*” (Del Mar, Twining 2015), “*Deleuze and Language*” (Lecerle 2002), the doctrine argues for a legal framework designed to swiftly adjust to changing societal needs and technological advancements.

Echoing the observations of the semiotician Umberto Eco, who noted that “a natural language is a flexible system of signification” (Eco, 1986: 92), the Doctrine of Flex Law posits that legal language too must evolve. It must remain malleable and responsive, mirroring societal changes and technological progress to maintain relevance and efficacy.

The doctrine builds upon the work of scholars like Frederick Schauer (1994), who delved into the substantial challenges courts face in aligning laws with evolving public interests and values (Schauer 1994: 785-789), and Matthew Adler, who explored the complexities of competing values and interests within legal systems (Adler 1998). These perspectives collectively argue for a law that is not only interpretative but also transformative, capable of balancing competing values and interpreting constitutional principles within a modern context.

By drawing parallels between the adaptability required in the arts and the flexibility necessary in modern and contemporary legal practices (Youping and Trzaskawka 2021; Wagner et al. 2020b), the Doctrine of Flex Law emphasizes the critical need for innovative and dynamic legal interpretations. Such a framework fosters a legal environment that can rapidly adapt to new challenges and realities, ensuring that laws not only govern but also grow with the society they serve. This introduction lays the groundwork for a detailed exploration of how legal systems can become more attuned to the nuances and complexities of modern life (Leone 2024), advocating for a legal system that evolves in tandem with its people (Duarte et al. 2019).

2. Textual Assemblage of Knowledge

Peter Goodrich (1984) promotes a flexible, interdisciplinary approach to legal studies, which includes analyzing “the study of the rhetoric of law, the analysis of the context and pragmatics of legal speaker and legal institution, the empirical examination of the functions and affinities of law viewed as communication and as function” (Goodrich 1984: 191).

Wagner and Marusek (2023a) further expand this notion by describing the ‘dual circuit of law’, which likens law to an integrated circuit with two main developmental trajectories; sometimes autonomous, sometimes conflicting. This model allows law to grow with the surrounding life, facilitating

both the territorialization of traditional legal concepts and their deterritorialization toward modern, contemporary visions (Deleuze and Guattari 1987: 18).

Furthermore, Dworkin (1988), in discussing interpretation, offers a significant perspective over these developmental trajectories emphasizing their creative interpretation, when he states:

“I shall capitalize on that similarity between artistic interpretation and the interpretation of social practice; I shall call them both forms of ‘creative’ interpretation to distinguish them from conversational and scientific interpretation” (Dworkin 1988: 50).

This doctrine underscores the dual nature of law: authoritative yet adaptable, strong yet susceptible to changes over time and space (MacCormick 1978). The process of disclosing and disseminating legal knowledge, termed lawfulness, is crucial in Flex Law to ensure transparency and public access to legal reasoning.

This doctrine also acknowledges the influence of “unavowable politics” (Buchanan and Guillaume 2009: 184), a term that refers to the often-unspoken political processes shaping laws, politics, and war. This supports the notion that laws embed underlying political norms that must be continuously questioned and adapted, with a clear emphasis on the role of spectacle in politics:

“The spectacle is at once the compensation for and cause of the loss of authenticity in everyday life that Debord perceived all around him. In Deleuze and Guattari’s terms, the spectacle – that is, war – is what enables unavowable politics (as they deem the present axiomatic age) to function. It gives desire something to invest in even as it derides our need to believe in something. There are (at least) three causal factors feeding the current situation and these can be broadly classified as being military, legal/doctrinal, and political” (Buchanan and Guillaume 2009: 184).

Additionally, the potential for multiple interpretations within legal texts suggests that the law can be seen as a living document with meanings that evolve over time (May 1996). So, the concept of legal pluralism is integral to Flex Law (Ando 2016), suggesting a perpetual condition of social reality

where normative actors engage in a symbolic struggle to define legal and social meanings:

“This is a blatant situation of legal pluralism, in which a plethora of normative actors wage a symbolic war to affect the definition of social meanings as filtered by law. If this is so, then legal pluralism can be regarded as a permanent condition of social reality: a perennial struggle for determining the contours of lawfulness” (Croce 2012: 27).

2.1. Destabilizing Arborescent Conceptions of Knowledge

The traditional arborescent model of knowledge, characterized by its hierarchical and linear structure, often limits the potential for diverse and innovative interpretations and applications of law. This model, resembling the branches of a tree, inherently restricts legal reasoning to predefined pathways, which can be counterproductive in a rapidly evolving society. In contrast, destabilizing these traditional conceptions calls for a more fluid, dynamic, vague framework that supports interconnected and multiple pathways of understanding (Endicott 2000).

Deleuze and Guattari (1987) criticize arborescent models for their rigidity and their tendency to impose a hierarchical order on knowledge, stifling creativity and adaptation. They advocate for a rhizomatic approach, where knowledge is not static and rooted but instead dynamic and sprawling, capable of branching out in multiple directions:

“On the side of the nomadic assemblages and war machines, it is a kind of rhizome, with its gaps, detours, subterranean passages, stems, openings, traits, holes, etc.” (Deleuze and Guattari 1987: 437).

This rhizomatic model is ideally suited to the legal realm, as it allows for the integration of diverse legal traditions and practices without the constraints imposed by rigid hierarchical structures.

Furthermore, the arborescent model often leads to a compartmentalization of knowledge, where information is segmented and isolated, hindering the holistic understanding necessary for effective legal reasoning in complex cases. By destabilizing these conceptions, we can encourage a more integrative

approach that values the cross-pollination of ideas and disciplines. This is particularly important in the context of global law, where different legal systems, each with their own cultural and unique historical specificities, must interact and harmonize. So, one of the key methods to challenge and destabilize these rigid structures is through the concept of “cross-pollination” of ideas across different disciplines and legal systems (Marusek and Wagner 2019).

Cross-pollination (Glazebrook 2015) in a legal context refers to the process by which diverse legal traditions, practices, and theories interact and influence each other, leading to innovative interpretations and applications of law, being termed “semi-permeable membrane, which allows rules to pass through it in different directions for different purposes” (Jowell and Dawn 2015: 117). Indeed, cross-pollination facilitates a more integrative approach to law by blending elements from various legal systems, cultural backgrounds, and academic disciplines (Swe Khine 2023). This integration is essential in a globalized world where legal practitioners often deal with cases that span different jurisdictions and legal frameworks. By encouraging the flow of ideas between, for example, common law and civil law systems, or incorporating insights from fields such as sociology, psychology, biology, and technology, legal systems can develop more holistic solutions that are responsive to complex multi-dimensional issues (Dworkin 1988). Cross-pollination also promotes creativity and innovation within the legal field. By interacting with a wide range of disciplines, legal thinkers are exposed to novel approaches and methodologies that can be adapted to legal analysis and problem-solving (Del Mar, Twining 2015: see part IV: 295-403). This can lead to groundbreaking legal theories and practices that challenge traditional norms and offer new perspectives on justice and regulation.

In today’s interconnected world, many legal issues cannot be confined to national borders or single disciplines. Issues like international trade, cyber law, environmental regulation, and human rights require a nuanced understanding that spans multiple legal systems and cultural contexts (Jowell and Dawn 2015). Cross-pollination helps create a legal framework that is capable of addressing these global complexities by drawing on diverse sources of knowledge and expertise. Furthermore, cross-pollination inherently supports diversity and inclusion in the legal field. It values different perspectives and backgrounds, recognizing that a richer, more varied input leads to more effective legal outcomes. This approach destabilizes traditional

power structures within law, which have historically favored certain perspectives over others, thereby democratizing the process of legal interpretation and application (Williams 2022).

We advocate for a departure from the traditional linear pathways of legal thinking, promoting a view of law as an adaptive, network-like structure. Such a structure can respond more adeptly to the complexities of modern life, where the interplay of global and local influences requires a more nuanced and versatile approach to legal interpretation and application (Wagner & Marusek 2025). May (1996) echoes this stance, noting the political implications of rhizomatic thought. “Gilles Deleuze and the politics of time” in *Man and World* (29: 293–304) emphasizes the importance of non-linear, networked approaches to understanding the complexities of law and governance.

By embracing a more fluid and interconnected framework, legal systems can become more resilient and better equipped to handle the challenges posed by the multifaceted nature of contemporary societal issues. This shift not only promotes a more inclusive understanding of law but also ensures that legal practices remain relevant and effective in the face of continual societal and technological change.

2.2. New Conceptions of Knowledge

Theoretical models like Deleuze and Guattari’s rhizome (1987) aptly illustrate the potential of cross-pollination. They propose a non-hierarchical, networked approach to knowledge creation, which opposes the linear, top-down information dissemination found in arborescent models. This theoretical backing underscores the practical importance of cross-pollination in fostering a resilient, adaptable, and inclusive legal framework.

By embracing cross-pollination, legal systems can move away from rigid hierarchical models towards more fluid, dynamic structures capable of adapting to the fast-paced changes of the modern world (Braidotti et al. 2019). This process not only promotes legal innovation but also ensures that law remains relevant and responsive to the evolving needs of society.

Rhizomatic structures suggest an alternative model of knowledge characterized by non-linear, interconnected pathways that bypass traditional hierarchical categorization. This model aligns well with the dynamic and

multifaceted nature of law, potentially leading to a legal system that is more dynamic, inclusive, and adaptable, capable of addressing the complexities of modern societies more effectively.

Deleuze's idea of rhizomatics (1995) proposes that knowledge is not static and rooted but rather spreads like the root system of plants that connect at various points. Applying this to law suggests a system where legal reasoning could foster inclusivity and adaptability, critical for addressing contemporary societal complexities (Robinson 2009). Moreover, the section incorporates Michel Foucault's analysis of biopower, demonstrating how laws regulate life through control over bodies and populations. Foucault explains,

“Power relations are rooted deep in the social nexus, not a supplementary structure over and above ‘society’ whose radical effacement one could perhaps dream of. To live in a society is, in any event, to live in such a way that some can act on the actions of others. A society without power relations can only be an abstraction” (Foucault 1982: 778).

This insight underscores the need for laws to evolve with the biological and social dynamics they govern. Foucault further details how this power extends into the organization of life, emphasizing the control over the economy and efficiency of movements rather than merely signs or symbols:

“Then there was the object of the control: it was not or was no longer the signifying elements of behavior or the language of the body, but the economy, the efficiency of movements, their internal organization; constraint bears upon the forces rather than upon the signs; the only truly important ceremony is that of exercise” (Foucault 1995: 137).

Flex Law, as discussed, recognizes the finitude of experience. It suggests that our understanding and experiences are limited and that laws, as products of these experiences, are open to reinterpretation and challenge as new insights emerge. This approach is crucial for viewing law itself as an object of potential experience that needs constant validation or rejection through reflective judgments assessing laws against new circumstances. Lecercle's insights (2002) are particularly relevant here. He notes,

“In order to make sense appear beneath or before the thick layer of meaning, a coup de force is needed: we need to offer violence to common sense and good sense in order to dislodge them from their established position, where meaning is solid because frozen. We need, before good sense, the fluidity of sense, and we may need, beneath or beyond common sense, the delirium that threatens the order of language” (Leclercle 2002: 125).

This perspective supports Flex Law’s emphasis on adaptability and responsiveness, suggesting that laws must embrace the “fluidity of sense” and the “bi-directionality” (Leclercle 2002: 135) of meanings to remain relevant and effective amidst societal changes.

In conclusion, Flex Law proposes viewing legal systems as living structures that must remain flexible and responsive to the evolving complexities of human life. It challenges traditional legal formalism and enriches our understanding of law as a dynamic field that must continually evolve. The integration of diverse theoretical perspectives from other scholars such as Hart (2012), Allan (2013), and Kelsen (2009) forms a robust framework that supports and enriches the Doctrine of Flex Law, advocating for legal systems that are adaptive and deeply rooted in an evolving understanding of law as a fundamental aspect of societal development and human interaction. This integration of concepts reflects the open texture of law in practical terms.

3. Expanded Discussion on Nomadic and Rhizomatic Legal Theories

We delve deeper into the nuances of nomadic and rhizomatic legal theories to better understand their implications for modern law. Nomadic legal theories advocate for a continual adaptation and fluidity in legal practices, reflecting the dynamic shifts in societal, technological, and environmental landscapes. This approach enables the legal system to respond more effectively to rapid changes, thus avoiding the rigidity of traditional legal frameworks. On the other hand, rhizomatic law proposes a decentralized and non-hierarchical approach, where law is seen as a network of interconnected influences and interpretations, free from a central controlling authority. This model is particularly suited to managing the complexities of global

legal interactions, where different legal traditions and systems continuously interact and influence one another. By exploring these theories in more detail, we can appreciate their potential to create a legal landscape that is more resilient, responsive, and inclusive, effectively addressing the diverse needs and challenges of a globally interconnected society.

3.1. Nomadic Legal Theories

Nomadic legal theories are fundamentally characterized by their emphasis on movement, flexibility, and continuous adaptation, drawing inspiration from the concept of nomadism which involves constant travel and flexibility in lifestyle. These theories challenge the traditional static nature of law, suggesting instead that legal systems should be inherently dynamic to effectively respond to the ever-changing societal, technological, and environmental contexts.

The core principle of nomadic legal theories is that laws should not be bound by rigid structures but should remain fluid to accommodate new challenges and opportunities as they arise. This approach promotes a view of the legal system as an evolving entity, akin to a living organism that responds instinctively to external stimuli. Such theories support the idea that law, like a nomad, should not be tethered to specific doctrines or principles but should have the ability to traverse various legal landscapes, adapting and integrating new norms and values (ref to add).

Goodrich (1990) delves into how legal personas, akin to masks worn by nomads, enable jurists to adopt multiple roles and perspectives, facilitating a more adaptive and multifaceted approach to legal interpretation and application. Goodrich argues that these masks represent the diverse identities and roles that legal practitioners can assume, enabling them to navigate various cultural, social, and legal contexts effectively. This metaphor highlights the necessity for a legal system that is capable of continual self-reinvention and responsive adaptation to complex global interactions.

This dynamic approach fosters a legal environment where continuous evolution and flexibility are not only possible but encouraged. It advocates for the reinterpretation of laws as societies evolve, suggesting that legal systems should not merely respond to changes but proactively anticipate and facilitate transformation. This could be particularly crucial in areas

like technology law, where new developments frequently outpace existing legal frameworks, and in multicultural societies where diverse legal traditions must coexist and interact harmoniously.

Nomadic legal theories thus propose a reimagined framework for law, one that supports a legal culture of perpetual motion and adaptation, mirroring the fluidity and uncertainty of the modern world. By embracing this nomadic ethos, legal systems can become more adaptable, responsive, and equipped to handle the complexities of a rapidly changing global society.

3.2. Rhizomatic Law

Rhizomatic law, building on the concept of rhizomatic knowledge, proposes a decentralized, non-hierarchical approach to legal interpretation and application. Unlike traditional legal systems that operate within a fixed hierarchy of authority, rhizomatic law envisions a legal landscape where multiple sources of law coexist, interact, and influence one another without a clear center of control. This approach mirrors natural systems and networks, where numerous nodes operate independently yet are interconnected, each capable of growth and regeneration in various directions. This model is particularly effective in handling the complexities of global law where different legal traditions and systems must interact and where local contexts significantly influence the interpretation and application of law.

Drawing parallels to Barthes' *Empire of Signs* (1983), we can see how signs and symbols operate fluidly across different cultures, carrying multiple meanings and interpretations depending on their context. Similarly, a rhizomatic approach to law recognizes that legal concepts are not fixed but are open to various interpretations based on cultural, social, and political contexts. For instance, the concept of "freedom" may carry different implications and limitations in different legal systems. In a rhizomatic legal system, these variations are not merely acknowledged but are seen as essential to the comprehensive application and understanding of laws in a diversified, interconnected world.

Deleuze and Guattari (1987: 30-39) highlight the intrinsic movements of deterritorialization and reterritorialization within legal systems, reflecting the constant shifts in how laws are understood and applied. These movements suggest that legal systems themselves are not static entities but are continuously shaped and reshaped by societal forces, movements, and conflicts.

The concept of “mutant flows” (Deleuze and Guattari 1987: 237-252) further introduces the idea that legal changes often arise from what initially appears as marginal or anomalous. These flows challenge existing legal codes, leading to their evolution or transformation – a process vital for the adaptation of law in response to new realities.

By embracing these theoretical frameworks, legal scholars and practitioners can explore more resilient, responsive, and inclusive ways to structure and apply legal systems in our increasingly complex world.

The rhizome, a botanical structure characterized by its horizontal growth and regenerative capabilities, provides a powerful metaphor for conceptual development in intellectual and creative fields. This chapter explores how the principles of rhizomatic growth can be applied to generate new ideas and recontextualize existing ones with new meanings. By examining the characteristics of rhizomes, such as their ability to expand in multiple directions, allocate resources dynamically, and regenerate from any point, we can develop a dynamic and non-linear approach to thought and creativity. This approach emphasizes multiplicity, connectivity, and continuous evolution, offering a fresh perspective on how concepts can be generated and transformed.

Rhizomes grow horizontally, spreading outwards and exploring new areas. This characteristic can be translated into the conceptual realm by encouraging the exploration of ideas in a non-linear and multi-directional manner. Rather than following a single path or hierarchy, rhizomatic thinking allows for the simultaneous development of multiple ideas and perspectives. This horizontal expansion symbolizes the potential for intellectual and creative endeavors to break free from traditional constraints and explore a broader range of possibilities.

Nodes along the length of a rhizome are points from which new shoots and roots emerge. These nodes represent intersections of ideas, disciplines, or methodologies that can give rise to innovative thoughts and solutions. In the context of conceptual development, nodes are the points of potential where new concepts can be generated. By recognizing and leveraging these nodes, thinkers can create connections between seemingly disparate ideas, leading to the emergence of novel and creative solutions.

The regenerative capability of rhizomes is another crucial aspect of their growth. Rhizomes can regenerate from any point, even if parts are severed or damaged. This resilience and adaptability highlight the importance of flexibility in conceptual development. Ideas can be revisited, reinterpreted,

and revitalized, allowing for the continuous evolution of thought. This regenerative process suggests that former concepts can be given new life through recontextualization, enabling them to remain relevant and impactful in changing contexts.

Rhizomatic growth encourages multiplicity and diversity, embracing a plurality of perspectives and approaches. This principle is essential for fostering creativity and innovation. By allowing diverse ideas to coexist and interact, we can stimulate intellectual and creative growth. Traditional hierarchical models often constrain the development of new ideas by imposing rigid structures and linear progression. In contrast, rhizomatic thinking promotes decentralization and non-linearity, enabling the spontaneous and organic emergence of concepts. This approach allows thinkers to break free from conventional patterns and explore novel pathways, leading to richer and more innovative outcomes.

The dynamic interplay of ideas is a fundamental aspect of rhizomatic structures. Just as rhizomes thrive on the interaction of interconnected nodes, the reinterpretation of former concepts involves recognizing and exploring the relationships between ideas. This dynamic interplay can reveal new insights and facilitate the transformation of old concepts into innovative and relevant ones. The continuous growth and regeneration of rhizomes illustrate the potential for ideas to evolve over time. By adopting a rhizomatic approach, we can embrace the ongoing process of conceptual evolution, allowing former ideas to be perpetually redefined and adapted to meet changing needs and contexts.

Grosz's concept of "volatile bodies" (1994) provides an additional layer of depth to our understanding of rhizomatic thought. In her work, Grosz explores the fluidity and dynamism of the body, emphasizing its capacity for change, adaptation, and transformation. This concept aligns with the principles of rhizomatic growth, as both highlight the importance of flexibility, adaptability, and the potential for continual reinvention. Volatile bodies, much like rhizomes, are not fixed or static; they are in constant flux, responding to and interacting with their environment. This perspective reinforces the idea that concepts, like bodies, are not rigid structures but dynamic entities capable of evolving and transforming in response to new contexts and interactions (Grosz 1994).

Deleuze and Guattari (1987: 388) also discuss the idea of bodies and concepts as inherently volatile and fluid. They emphasize that the rhizomatic

model of thought and organization opposes rigid hierarchical structures, promoting a networked, non-hierarchical approach to knowledge and existence. This model, akin to volatile bodies, underscores the importance of adaptability and resilience, allowing for continuous transformation and growth in unpredictable directions.

Integrating the rhizome metaphor with the field of law offers compelling insights into the nature of legal systems as evolving entities. Jeremy Bentham famously described the law as a “monster” that continually grows and adapts, reflecting the dynamic and expansive nature of legal principles and practices. Bentham’s metaphor underscores the law’s ability to evolve and expand in response to societal changes and emerging needs (Bentham 1843). This perspective aligns with the rhizomatic framework, which emphasizes growth, adaptability, and the continuous reconfiguration of structures.

Law, much like a rhizome, is characterized by its horizontal expansion and ability to generate new pathways. Legal systems evolve by incorporating new statutes, precedents, and interpretations, much like how rhizomes develop new shoots and roots. The nodes within a rhizomatic structure can be seen as analogous to pivotal legal cases or legislative acts that create new avenues for interpretation and application. This dynamic interplay allows the law to remain responsive and relevant, continuously adapting to the complexities of modern society.

The evolution of law, however, varies significantly between different jurisdictions, making the rhizome metaphor even more complex. From a European perspective, legal evolution often involves intricate interactions between national laws and supranational regulations from bodies such as the European Union. This multilayered legal structure requires continuous negotiation and adaptation, reflecting a deeply interconnected and collaborative process. Conversely, a domestic legal perspective, such as that in the United States, focuses more on federal and state dynamics, where laws evolve through judicial interpretations and legislative amendments within a more self-contained system. The distinct paths of legal evolution in these contexts underscore the importance of understanding the full legal framework when analyzing how laws develop and adapt. Without this comprehensive legal context, the rhizomatic growth of law becomes difficult to decipher, as the nuances of each system’s interactions and adaptations are crucial to fully grasp its evolution.

Moreover, the roots of the rhizome can flow upwards and downwards, akin to the perpetual pendulum (Wagner, Marusek and Matulewska 2023). This movement illustrates the dynamic nature of growth and adaptation, where the direction of development is not fixed but oscillates in response to various influences and conditions. In the legal context, this means that the evolution of law can be influenced by grassroots movements pushing upwards or by top-down reforms implemented by higher authorities. This bidirectional flow enhances the complexity of the rhizome metaphor, emphasizing that legal evolution is a multifaceted process influenced by diverse and often competing forces (Mchangama and Alkiviadou 2022).

Furthermore, Hart's concept of "open texture" (1961) aligns with the rhizomatic framework, suggesting that the application of legal rules can vary according to space and time. Hart (1961) posits that legal language is inherently indeterminate and open to interpretation, which allows for flexibility and adaptation as new situations arise. This notion of open texture complements the rhizomatic view of law as an evolving and adaptive entity, capable of matching or mismatching according to the specific contexts in which it operates.

The notion of commensurability in law (Schauer 1994) adds another layer to this discussion. Commensurability refers to the ability to measure or compare different legal principles, cases, or systems by a common standard. In a rhizomatic legal framework, commensurability can be challenging due to the decentralized and non-linear nature of legal evolution. Different legal systems and jurisdictions may develop unique interpretations and applications of the law, making direct comparisons difficult. However, this diversity also enriches the legal landscape, allowing for a more nuanced and adaptable approach to justice.

Oscillation is a key concept in the determination of legal principles, reflecting the fluctuating nature of legal interpretation and application. Just as a rhizome's growth can oscillate between different directions, legal concepts can oscillate in their interpretations, influenced by shifting societal values, political pressures, and new judicial precedents. This oscillation mirrors the perpetual pendulum described by Wagner, Marusek and Matulewska (2023), emphasizing that the determination of legal concepts is not a fixed process but one subject to constant movement and change. This dynamic oscillation underscores the adaptability and fluidity of legal systems, enabling them to respond to evolving contexts and emerging challenges effectively.

The idea of oscillation can also be linked to the concept of the Newtonian clock, which represents a system in perpetual motion, constantly influenced by external forces and conditions. Just as a Newtonian clock keeps expanding eternally according to circumstances, the oscillation in legal concepts reflects a continual process of adjustment and redefinition in response to new contexts and challenges. This perpetual expansion and adaptation ensure that legal systems remain dynamic and responsive, capable of addressing the complexities of modern society.

The integration of the concept of “Third Space” into rhizomatic reflection and the construction of legal concepts further enriches this framework. Bhabha’s notion of Third Space refers to an intercultural space where hybrid identities and meanings are negotiated and constructed (Bhabha, 1994). In a legal context, the Third Space represents the intersection where diverse legal traditions, cultural norms, and societal values interact, creating opportunities for new interpretations and applications of the law. This intercultural space is inherently rhizomatic, characterized by its fluidity, multiplicity, and potential for continuous transformation.

Within this rhizomatic approach, the cultural element is more than crucial in deciphering the flexibility in law. Legal systems do not evolve in a vacuum; they are deeply embedded within the cultural contexts that shape and are shaped by them. Culture influences how laws are interpreted, applied, and adapted over time. It informs the values, beliefs, and practices that underpin legal reasoning and decision-making processes. Understanding the cultural dimensions of law is essential for grasping its flexibility and responsiveness to changing societal needs. This cultural layer adds depth to the rhizomatic framework, highlighting the importance of considering cultural factors when analyzing the evolution and adaptation of legal concepts.

The complexity of law is intrinsically tied to cultural knowledge, which varies significantly from one country to another. This variation necessitates cultural mediation to solve legal meanings and interpretations. G mar and Kassirer (2004) emphasize that translation and interpretation of legal texts are not merely linguistic tasks but also cultural ones, requiring a deep understanding of the cultural contexts from which these texts emerge. This cultural mediation is crucial for ensuring that legal concepts are accurately understood and appropriately applied across different jurisdictions. The multi-layered nature of legal systems, encompassing local, national,

and international levels, further underscores the necessity of cultural mediation in navigating the complex landscape of legal knowledge.

Sacco's concept of "legal formants" further elaborates on this notion. According to Sacco, legal formants are the different components that influence the creation and interpretation of legal norms, including legislative texts, judicial decisions, academic writings, and social practices (Sacco 1991). Understanding these formants requires more than mere translation; it demands mediation that comprehensively considers the cultural and contextual factors that shape legal systems. This approach ensures that new laws and concepts are effectively transferred and adapted into different legal frameworks, maintaining their relevance and applicability.

Additionally, the idea that law has a hidden side, as explored by thinkers like Umberto Eco and Roland Barthes, provides a profound dimension to this discussion. Eco (1979) and Barthes (1983) suggest that texts, including legal texts, possess layers of meaning that are not immediately visible. These hidden layers can reveal underlying structures, assumptions, and ideologies that influence the interpretation and application of law. In the context of rhizomatic growth, this hidden side of law can help decipher complex situations that have created multi-rooted rhizomes, rendering legal knowledge a challenge. The hidden dimensions of law can uncover connections and contradictions that are not apparent at first glance, allowing for a deeper and more nuanced understanding of legal principles and their applications.

In academic research, adopting a rhizomatic approach can lead to more interdisciplinary and integrative studies. Researchers can draw from multiple fields and methodologies, fostering a richer and more holistic understanding of complex issues.

The rhizome, with its horizontal expansion, connectivity, and regenerative capabilities, offers a powerful framework for conceptual development. By embracing the principles of rhizomatic growth and integrating the concepts of volatile bodies, the evolving nature of law, the perpetual pendulum, open texture, commensurability, oscillation, Third Space, cultural elements, the multi-layered construction of law, and the hidden side of law, we can foster a dynamic and non-linear approach to generating new ideas and reinterpreting existing ones (Heijenoort 1986: 40-41). This approach not only encourages creativity and innovation but also ensures the continuous evolution and adaptation of thought. As we navigate an increasingly complex and intercon-

nected world, the rhizome metaphor provides a valuable lens through which to understand and engage with the ever-changing landscape of ideas.

4. Conclusion

The Doctrine of Flex Law articulates a conceptual framework through which legal systems can be reimagined as dynamic, adaptable, and responsive to the multifaceted realities of contemporary life. Drawing from interdisciplinary theories, particularly rhizomatic and nomadic paradigms, this doctrine challenges the conventional rigidity of legal structures by emphasizing multiplicity, decentralization, and continual evolution.

Rather than viewing law as a fixed and hierarchical entity, Flex Law positions it as a living, mutable system—capable of integrating cultural, technological, and societal transformations into its interpretative and operational core. This reconceptualization not only foregrounds the necessity of cross-pollination between legal traditions and academic disciplines but also underscores the importance of reflexivity and inclusivity in legal processes.

By exploring the intersections of semiotics, legal theory, and cultural studies, this work contributes to a broader understanding of law's potential to act as a fluid mechanism of governance, interpretation, and social coordination. Flex Law thus offers a robust analytical lens through which to examine the ongoing transformation of legal norms in response to global challenges and complexities. Future research might further investigate its practical implications across varied jurisdictions and thematic domains, reinforcing its relevance in both theory and praxis.

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Being all ears to netizens: Information disclosure in Chinese police notifications on Weibo

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DOI | 10.14195/2184-9781_6_4

ABSTRACT

Drawing on Discourse Information Theory (Du, 2014) and Rhizomatic Theory (Deleuze and Guattari, 1987), this study investigates how may Chinese police departments better respond to netizens' queries when issuing notifications on Weibo (a Chinese social media platform combining functions of microblogging, social networking, and news media). Three research questions guide this inquiry: a) What are the information features of police notifications? b) What types of information do netizens expect from police notifications? c) How could police departments improve police notifications by addressing netizens' queries? To answer these questions,

a corpus of 30 influential police notifications and their ensuing comments on Weibo was collected and analyzed. This study concludes that in the digital age, the effectiveness of law is contingent upon its integration into interconnected legal and social practices. Law enforcement officers and netizens jointly shape the legal discourse, thereby influencing how information is shared and developed. This collaborative dynamic underscores the importance of transparent and responsive communication in fostering public trust and effective law enforcement.

KEYWORDS

police notifications, social media, Discourse Information Theory, interconnectedness, information disclosure

1. Introduction

On June 10, 2022, a violent assault in Tangshan, a northern Chinese city, garnered nationwide attention following the widespread circulation of surveillance footage on social media. The footage captured a harrowing scene in which several men assaulted women at a barbecue restaurant. The male perpetrator allegedly harassed a female customer, and upon her resistance, he brutally attacked her. His accomplices subsequently joined in, beating the woman and her female companions. The victims were seen

being thrown to the ground, hit, and stomped on before the assailants fled the scene.

The initial police notification regarding the incident on Weibo failed to meet public expectations for detailed case-related information. It was criticized for its vague wording and lack of transparency, which further amplified public outrage online. This widespread criticism, stemming from inadequate communication in the police notification, prompted the local police department to revise its approach. In response, it improved its communication strategy in the follow-up notifications and provided detailed updates on the case.

However, not all cases involve follow-up notifications, which could otherwise provide opportunities for police departments to engage with netizens and restore their public image. For example, in 2022, the dragging incident in which a woman and her daughter were dragged away by the woman's ex-husband also sparked widespread dissatisfaction among netizens after the local police department issued a police notification. The dissatisfaction suggests that the traditional linear approach to information disclosure in police notifications—characterized by a one-way, top-down communication style—fails to meet netizens' expectations for the timely release of accurate and comprehensive case-related information.

The rapid development of social media has significantly enhanced public participation in public events and the exercise of supervisory rights. Media platforms have evolved from traditional communication channels into dynamic and interactive digital media (Surette, 2015), reshaping how police departments craft their communication strategies to engage with the public and address their concerns. The assault incident and the dragging incident mentioned above underscore the importance of transparency, responsiveness, and trust-building in fostering effective public discourse. The dynamic interaction between the local police department and netizens highlights the challenges and opportunities of police communication in the age of social media. The incidents also reflect the complex interplay between social media, netizens, and police departments in contemporary China. Therefore, it is necessary to explore what netizens expect from police notifications and how could the police departments incorporate netizens' concerns in the police notifications on Weibo.

The process of issuing police notifications is a process of information disclosure (Li, 2022). Drawing on the Discourse Information Theory (short

for DIT) (Du, 2014) and the Rhizomatic Theory (Deleuze & Guattari, 1987), this study investigates how may Chinese police departments better respond to netizens' queries when issuing notifications on Weibo. To this end, three research questions are addressed: a) What are the information features of police notifications? b) What types of information do netizens expect from police notifications? c) How could police departments improve police notifications by addressing netizens' queries?

Section 2 reviews previous studies on police notifications and the DIT and Rhizomatic Theory. Section 3 introduces the methodology of this study. Section 4 presents the findings of the data analysis. Section 5 offers a brief discussion, and Section 6 concludes the paper by listing the implications and limitations of this study.

2. Literature Review

This section reviews existing studies on social media policing, police notifications in China, and the theoretical frameworks underpinning this research, providing a comprehensive foundation for the analysis.

2.1. Social media policing

Social media among contemporary police departments worldwide has become increasingly prevalent (Grimmelikhuijsen & Meijer, 2015). The integration of platforms like Twitter, Facebook, and Sina Weibo into police communication strategies has introduced transformative opportunities for crime prevention, public engagement, and organizational transparency. However, these developments also present significant challenges, particularly in balancing public expectations with the operational limitations of social media.

Globally, the functions of social media policing extend beyond traditional communication. Social media allows law enforcement agencies to disseminate timely information, respond to public concerns, and enhance their organizational image (Mayes, 2017; O'Connor & Zaidi, 2021). Platforms like Twitter and Facebook also enable interactive communication, fostering closer relationships with communities and improving the public's perception

of police legitimacy (Grimmelikhuijsen & Meijer, 2015). Heverin and Zach (2010) illustrate how police departments use social media to share critical information, ranging from crime prevention tips to emergency updates. This immediacy is particularly effective in engaging citizens during crises, where quick and reliable information can mitigate public anxiety and prevent the spread of misinformation.

Despite these benefits, challenges remain. One critical issue is the fragmented and often inconsistent implementation of social media strategies across jurisdictions. Meijer and Thaens (2013) highlight variations in how police departments in North America approach social media, with some prioritizing transparency and interaction, while others focus on one-way information dissemination. Additionally, Crump (2011) points out that many police organizations struggle to integrate social media effectively into their workflows, often treating it as an afterthought rather than a core communication tool.

The dynamic nature of social media also complicates police departments' efforts to manage public discourse. Marwich (2012) emphasizes the concept of "social surveillance," where the public monitors and critiques police activity, shaping the narrative surrounding law enforcement actions. This increased scrutiny, while beneficial for transparency, can also expose law enforcement agencies to criticism when their communication is perceived as insufficient or inauthentic. Surette (2015) further notes that the portrayal of police in media, including social media, influences public perceptions of legitimacy and trust, underscoring the importance of strategic image management.

To address these challenges, scholars worldwide propose several strategies. Mayes (2017) emphasizes the importance of organizational image construction on social media, advocating for a consistent, transparent, and audience-centered approach. Liu (2019) suggests that police notifications should balance legal precision with emotional resonance, using language that bridges the gap between institutional authority and public empathy. Additionally, Williams et al. (2013) highlight the potential of advanced technologies, such as network analysis and sentiment monitoring, to enhance law enforcement's ability to respond to public discourse in real-time.

2.2 Police notifications in China

Chinese police departments are active in social media policing. As early as 2010, Foshan Public Security Bureau in Guangdong Province launched the first public security Weibo account on Sina Weibo. This initiative marked the beginning of widespread adoption of social media platforms, such as Weibo and WeChat, by police departments in China to disseminate information, serve the public, and improve communication between law enforcement and netizens (Chen, 2023). Police departments across the country now have more than 50,000 social media accounts (Li, 2022).

Police notifications, known as *Jingqing Tongbao* (警情通报), *Jingfang Tongbao* (警方通报), *Qingkuang Tongbao* (情况通报), *Anqing Tongbao* (案情通报), and *Anqing Xubao* (案情续报) in Chinese, are generally categorized as “official notifications” (Li, 2022) and form a key component of the government’s information disclosure system (Chen, 2023). Police information disclosure is inherently a reflection of the police’s ability to manage issues and significantly impacts the public’s perception of the police (Li, 2022).

Social media policing in China reflects global trends while remaining deeply rooted in local cultural and institutional contexts. Platforms like Sina Weibo play a vital role in fostering direct communication between police departments and citizens, effectively addressing public concerns and combating misinformation (Chen, 2023). In the current online environment, where the truth is often elusive, police notifications have become not only an authoritative voice to address public concerns and debunk rumors but also a primary source of case information for netizens (Yao & Wang, 2020).

However, scholars such as Li, Y.Q. (2019) and Li, G.C. (2019) have pointed out several limitations in the effectiveness of police notifications. Common issues include delays in release, vague or ambiguous language, and a discourse hegemony that prioritizes official narratives over public concerns. These shortcomings often result in reactive, rather than proactive, communication, especially during crises, which undermines public trust.

To overcome these challenges, scholars have proposed various strategies. At the macro level, Peng (2005) advocated for the formalization of the police notification system, suggesting clearer delineation of rights and responsibilities, improvement of spokesperson systems, and legal codification of the notification process. Li, B. (2019) emphasized the importance of fostering intersubjective communication between authorities and the public,

highlighting the need for inclusivity, mutual understanding, and cooperation in government notifications. Additionally, scholars have urged adherence to the Regulations on the Disclosure of Government Information (Yuan & Peng, 2010; Chen, 2023). Li, G.C. (2019) further suggested that police notifications should balance legal rigor with empathetic language to enhance the public's trust in law enforcement.

In terms of content, Chen (2023) underscored the principles of “accuracy” and “legality” in police notifications. Zhao (2017) recommended that notifications include both start and end times for incidents to allow the public to gauge response efficiency. Specific location details, such as store names or building numbers, should be omitted to avoid unnecessary complications. Moreover, speculative language, non-standard terms, and omission of key elements should be avoided. Liu (2019) highlighted the importance of conceptual, interpersonal, and discourse functions in drafting police notifications. Techniques such as using interjections, modal verbs, and adverbs can help humanize notifications and strengthen the connection between law enforcement and the public. Additionally, commands and imperatives can serve as tools for providing guidance, making appeals, or issuing warnings.

While some scholars have conducted content analyses of police notifications posted on social media (Zhao, 2017; Li, B., 2019; Yao & Wang, 2020; Liu, 2019; Li, 2022; Yang, 2022), these pioneering studies primarily offer descriptive information necessary for foundational research. However, the interplay between discourse information features, public interpretations, and social media dynamics remains limited. Police notifications in China exemplify the dual nature of social media policing: a significant opportunity to enhance transparency and public trust, but also a challenge due to operational and communicative complexities. Addressing these issues requires a comprehensive approach that considers the social, cultural, and technological factors shaping police-public interactions in the digital age.

To bridge this gap, this paper adopts DIT and integrates Rhizomatic Theory as an analytical framework to examine police notifications.

2.3. Theoretical Basis

This study draws upon two theories—DIT and Rhizomatic Theory—to explore the characteristics of information disclosure in Chinese

police notifications and the dynamics of police-public interactions on social media.

2.3.1. Discourse Information Theory

The Discourse Information Theory (short for the DIT) proposed by Prof. Jinbang Du of Guangdong University of Foreign Studies in 2007 defines discourse information as a proposition with a relatively independent, complete structure that constitutes the smallest meaningful unit for communication (Du, 2014). Information acts as a bridge between language and cognition, representing knowledge. Participants use, process, and share information, organizing each information unit into a hierarchical structure referred to as a tree information structure.

The tree information structure is a fundamental theoretical model of DIT. In this model (see Figure 1), discourse information is organized into a hierarchical structure consisting of a kernel proposition (KN) and its underlying information. Each discourse contains multiple information units, each comprising a proposition. These units are independent but closely related, with their relationships represented by 15 types of information knots, symbolized by abbreviations¹.

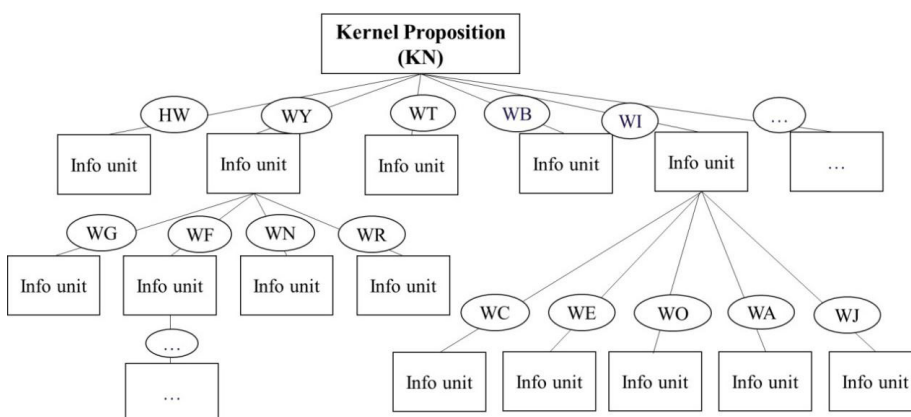


Figure 1 Tree information structure of discourse (Du, 2007)

¹ The full names of the 15 abbreviations are: What thing (WT); What basis (WB); What fact (WF); What inference (WI); What disposal (WP); Who (WO); When (WN); Where (WR); How (HW); Why (WY); What effect (WE); What condition (WC); What attitude (WA); What change (WG); What judgment (WJ) (Du, 2014).

The DIT classifies these 15 types of information knots into three categories: state, process, and attitude². Moreover, the DIT views propositions as processes centered on predicates, with involved objects as entities, all occurring under specific conditions. Process, entity, and condition are the three main elements of information, essential for identifying specific content and features. Each type of information element has several subclasses³.

In this context, the predicate represents the process, the entity refers to the participants, and the condition provides the circumstances in which the process occurs. Analyzing these elements allows for a detailed examination of the information features within the discourse of police notifications.

As a specialized research method in forensic linguistics, DIT focuses on the overall structure of discourse information, its specific elements, and their arrangement across various texts (Du, 2009). DIT has been further developed by many scholars and applied to various fields, including courtroom discourse analysis, legal translation, authorship identification, speaker identification, and English teaching (Yuan et al., 2024a; Yuan et al., 2024b). DIT offers a powerful framework for analyzing the characteristics of written discourse, providing a robust theoretical basis for examining the discourse features of police notifications.

2.3.2. Rhizomatic Theory

The discourse information theory takes the discourse as the starting point, examining the relationship between language, information, and cognition from the level of discourse, and emphasizing the social properties of information (Xu, 2016), which can meet the needs of studying the discourse information features of the police notification within itself. Meanwhile, rhizomatic theory, emphasizing decentralization, interconnect-

² The state category describes situations, including WT, WF, WO, WN, and WR; The process category explains how things develop and change, including HW, WY, WE, WC, and WG; The attitude category expresses values, attitudes, and perspectives, including WB, WI, WP, WA, and WJ (Du, 2014).

³ Symbols of the information elements: Process (P) including State (PS), Quality (PQ), Appear (PA), Relation (PR), Behavior (PB), Cause (PC), Turn (PT), and Negation (PN); entity (e) including agent (1), dative (2), patient (3), factitive (4), and attribute (5); condition (c) including instrument (i), location (l), source (s), goal (g), comitative (c), time (t), affected (a), with (w), situation (o), basis (b), manner (m), and elaboration (e) (Du, 2014).

edness, and adaptability, provides a novel lens for understanding the non-linear, dynamic interaction between police notifications and netizen comments.

The Rhizomatic Theory is a philosophical concept introduced in Deleuze and Guattari's book *"A Thousand Plateaus"* (Deleuze and Guattari, 1987) as part of their broader work on "schizoanalysis." The key concepts of Rhizomatic Theory are as follows: First, non-hierarchical structure: Unlike a tree, which has a clear root and branches, a rhizome has no central point. It spreads in all directions without a clear beginning or end. Second, multiplicity: A rhizome comprises diverse elements and connections, embracing complexity and rejecting the idea of a single, unified order. Third, decentralization: Power, knowledge, and meaning in a rhizome are distributed across various nodes, avoiding centralization. Fourth, nomadism: Rhizomes support a "nomadic" movement of thought and being, allowing for freedom, fluidity, and adaptability rather than being confined to rigid structures.

The rhizomatic analysis is a spatialized analysis based on the transition from the Archive to the Diagram through cartography (Peters & Taglietti, 2019) and it has been applied in various fields such as education, cultural studies, and digital networks. In education, it serves as a model for learner-centered education, where students explore knowledge through self-directed, non-linear pathways. In cultural studies, it is applied to analyze culture as a complex, interconnected network of influences and practices rather than a singular, dominant narrative (O'Sullivan, 2022).

Overall, the Rhizomatic Theory challenges traditional ways of thinking and organizing knowledge, advocating for a more flexible, interconnected, and dynamic approach. The Internet and social media can be seen as rhizomatic structures, where information spreads rapidly and unpredictably without central control (Deleuze & Guattari, 1987). It mirrors the fluid, decentralized nature of online interactions, allowing for a deeper exploration of how information flows and adapts in response to user engagement.

3. Methodology

This study adopts a data-based qualitative and quantitative approach to explore the characteristics of information disclosure in Chinese police notifications and the dynamics of public engagement on Weibo. Discourse

information analysis (DIA) and rhizomatic analysis are adopted in the discourse analysis. The dataset includes the written content of 30 police notifications and the corresponding comments from netizens. The analysis focuses on identifying patterns and interactions within the data through discourse analysis.

3.1. Data

The data analyzed here are collected from Sina Weibo. Police notifications are initially published by the respective police departments on their official Weibo accounts and then forwarded by other Weibo accounts, triggering intense discussions among netizens. Among these accounts, “@China News Network (中国新闻网)” is particularly influential. As of the time of corpus collection, “@China News Network” has over 80 million followers and more than 700 million comments, underscoring its significant influence on Weibo. Due to the varying levels of influence among the accounts that initially publish police notifications on Weibo, this study selected notifications forwarded by “@China News Network” as the source of its corpus to minimize confounding variables.

Thirty police notifications, each corresponding to a separate case that had garnered significant public attention and discussion on Weibo between May 31, 2022, and May 31, 2023 were selected, based on the number of comments and likes they received (see Table 1).

Table 1: Information of the 30 Police Notifications

No.	Time of the Case	Time of Releasing	Agencies	No. of Comments	No. of Likes	Nature of the case
1	2022/9/2	2022/9/4	Loudi City PSB ⁴ TPB ⁵ ,Hunan Province	18000	382000	criminal
2	2022/7/6	2022/7/12	Laiyang City PSB, Shandong Province	16000	614000	criminal
3	N/A	2022/7/10	Xuchang City PSB, Henan Province	9737	95000	criminal

⁴ PSB: Police Security Brigade

⁵ TPB: Traffic Police Bureau

No.	Time of the Case	Time of Releasing	Agencies	No. of Comments	No. of Likes	Nature of the case
4	2022/7/26	2022/7/30	Leshan City PSB, Sichuan Province	9400	148000	criminal
5	2023/2/22	2023/4/5	Deyang City PSB Luojiang District Branch, Sichuan Province	6800	288000	criminal
6	2022/10/14	2023/1/29	Jiangxi Province, City and County Joint PSB	6198	88000	criminal
7	2022/7/16	2022/7/17	Shenyang City PSB, Liaoning Province	5720	147000	administrative
8	2022/7/16	2022/7/20	Zhongmu County PSB, Henan Province	5143	122000	criminal
9	2022/6/28	2022/7/2	Junlian County PSB, Sichuan Province	4721	89000	criminal
10	2022/6/19	2022/6/19	Huizhou City PSB Huicheng District Branch, Guangdong Province	4167	68000	administrative
11	2022/7/12	2022/8/22	Shanghai City PSB Pudong District Branch	4138	11000	criminal
12	2022/11/15	2022/11/15	Taian City PSB Taishan District Branch	3973	48000	criminal
13	2022/7/17	2022/7/20	Xinchang County PSB, Zhejiang Province	3338	90000	criminal
14	2023/3/24	2023/3/25	Wugong County PSB, Shanxi Province	3081	66000	administrative
15	2022/11/19	2022/11/20	Fuzhou City PSB Cangshan District Branch, Fujian Province	2699	30000	criminal
16	2023/2/15	2023/2/16	Xianju County PSB, Zhejiang Province	2629	28000	criminal
17	2023/3/15	2023/3/16	Guangzhou City PSBPTB ⁶	2481	28000	administrative
18	2022/6/6	2022/6/6	Bayan County PSB, Heilongjiang Province	2252	27000	criminal
19	2022/6/10	2022/6/21	Hebei Provincial PSD ⁷	2133	23000	criminal

⁶ PTB: Public Transport Branch

⁷ PSD: Public Security Department

No.	Time of the Case	Time of Releasing	Agencies	No. of Comments	No. of Likes	Nature of the case
20	2023/5/15	2023/5/17	Beijing City PSB Tongzhou District Branch	1915	54000	criminal
21	2022/7/2	2022/7/6	Anyi County PSBTPB, Jiangxi Province	1672	31000	criminal
22	2022/8/17	2022/8/19	Dongcheng District PSB, Beijing City	1660	38000	administrative
23	2023/3/31	2023/4/5	Wenzhou City PSB, Zhejiang province	1357	23000	criminal
24	2023/3/22	2023/3/26	Guangzhou City PSB Yuexiu District Branch, Guangdong Province	1266	15000	administrative
25	2023/2/4	2023/2/5	Hunan Provincial Highway Traffic Police Station	1261	4618	criminal
26	2022/10/14	2023/1/7	Jiangxi Province, City and County Joint PSB	1228	9427	criminal
27	2022/8/25	2022/8/26	Qingdao Railway PSB, Shandong Province	1217	9187	administrative
28	N/A	2022/6/12	Tangshan City PSB Fengnan District Branch, Hebei Province	1086	11000	criminal
29	2022/5/27	2022/6/3	Tonghua City PSB Dongchang District Branch, Jilin Province	1029	18000	criminal
30	2023/5/2	2023/5/10	Chengdu City Railway PSB, Sichuan Province	1024	7749	administrative

The dataset comprises 30 police notifications with over 1,000 comments each, ranked by comment count. These notifications primarily involve criminal cases and were issued by police agencies across 12 provinces, 16 cities, and 7 counties. Most notifications originate from public security bureaus, highlighting diverse regional contexts.

When collecting the data, comments unrelated to the research were excluded, and those related to the public's perception of police departments were collected. These comments include criticism, suggestions and praise of police notifications and police departments. The final corpus included police notifications totaling 14,213 characters and netizens' comments totaling 80,384 characters.

3.2. Data analysis

Firstly, discourse information analysis (DIA) is adopted here to get the features of information disclosed in police notifications. DIA is a new approach to discourse analysis, which focuses on the content, structure and relationship of information in a discourse (Du, 2011; Xu, 2014). The DIT takes propositions as the basic carrier of information, making information stratifiable and measurable, and laying the foundation for macro and micro analysis of information (Xu, 2016). According to the DIT, information knots and information elements were annotated and counted using BFSU Qualitative Coder annotation. To reduce subjectivity and improve accuracy, this tagging is performed jointly by the author and two other graduate students. Then, the frequency of information element combinations were figured out on AntConc and the tree structure of each police notification was mapped using XMind.

Secondly, netizens' comments were segmented using Gooseeker, a Chinese word segmentation tool. High-frequency keywords directly related to netizens' concerns were selected in collaboration with two other graduate students, and a word cloud was generated to summarize netizens' expectations for police notifications.

Besides, rhizomatic analysis is applied to explore the decentralized and adaptive nature of the relationship between the information disclosure in police notifications and public interactions, so as to conclude the implications for the strategies of releasing police notifications.

4. Findings

This section presents the findings of the study, focusing on the key features of information disclosed in police notifications and netizens' primary expectations regarding such disclosures.

4.1. Features of information disclosed in police notifications

Statistics on police notifications reveal that the framework for information disclosure has evolved into a relatively fixed pattern.

4.1.1. Four-word mode of the kernel

An analysis of the number of characters in the kernels of 30 police notifications reveals a predominant four-character format.

Specifically, the contents and frequency of these kernels show that the term “警情通报” (Notification of Police Affairs) is used as the kernel in 20 notifications, “情况通报” (Notification of Circumstances) in six, and “警方通报” (Police Report) in one. The information disclosed in these three types of kernels is largely similar, with none providing detailed information about the cases. In addition to these 27 police notifications, the titles of the other three police notifications contain 31, 21 and 18 characters respectively. The three titles are “关于陈某志等涉嫌寻衅滋事、暴力殴打他人等案件侦办进展情况的通报” (Notification on the Progress of the Investigation into the Case Involving Chen Mouzhi and Others Suspected of Provoking Trouble and Violent Assault), “许广高速公路望城段发生多起多车追尾交通事故” (Multiple Multi-Vehicle Rear-End Traffic Accidents on the Wangcheng Section of the Xuguang Expressway), and “关于胡某宇失踪事件调查进展情况的通报” (Notification on the Progress of the Investigation into the Disappearance of Hu Mouyu). The results of the correlation analysis reveal a moderate positive association between title length and overall text length (Pearson $r = 0.431$; Spearman's $\rho = 0.440$). This finding suggests that title length can to some extent be indicative of the overall length of a text, though it does not function as a determining factor. In other words, while title length demonstrates a certain degree of predictive potential with respect to total text length, the latter is more substantially shaped by variables such as genre or content type, communicative purpose, and information density.

4.1.2. Greatly varied information development

The information development and structure in police notifications can be shown vividly in the information tree structure of the DIT.

After drawing the tree structures of 30 police notifications, it can be found that there are ten notifications featuring five information knots at the first level, while others are range from 3-8. This suggests that the framework for information disclosure in police notifications is largely standardized. While there is a general framework, the depth and direction

of information development are shaped by the specific context of each case. And the information development of police notifications can be divided into the following three categories (See Figure 2).

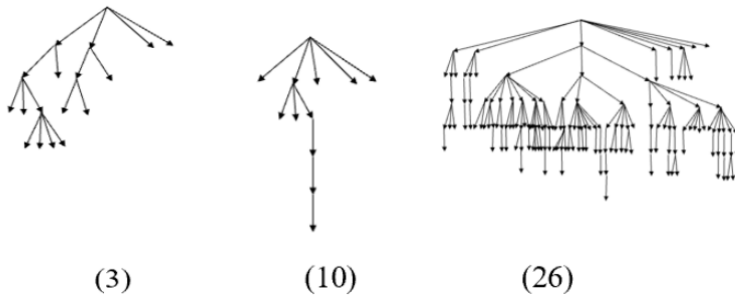


Figure 2 Information structures of case No. 3, 10, and 26

According to the DIT, a greater number of information levels and branches at each level indicates deeper information development, while fewer levels and branches suggest a more concise discourse. By comparison, it can be seen from the figure that the development of case No. 26 has the most in-depth information development, reaching the 7th level, while the information development of Case 3 is not in-depth enough, only reaching the 4th level. Although the information development of Case 10 is relatively in-depth, in the first level, only one item of information has been fully developed which indicates an imbalance of information arrangement. The information development in Case 26 is relatively in-depth and balanced.

Case 26, from Jiangxi police, details the investigation into Hu's disappearance. Hu had been missing for over two months before the police department issued the notification. Rumors proliferated after November 15, 2022, leading to a surge in public opinion. The police department responded on January 7, 2023, by issuing a detailed notification about the investigation. Another lengthy notification, consisting of 2,496 characters, was from Sichuan police, reporting a death in a student dormitory. Similar to the previous case, this notification was prompted by the rapid spread of rumors online, prompting the police department to provide detailed investigation information. It is evident that the more attention a case receives on Weibo, the more information is disclosed in police notifications.

4.1.3. Behavior-oriented information disclosure

Data analysis reveals that all of the eight process information elements were identified, with 758 behavior (PB) elements being the most dominant, accounting for 60.7%, taking a leading position among all process information elements. Moreover, PB appears in every police notification. The prevalence of PB shows that they are essential information elements in police notifications and there is a behavior-oriented information disclosure in police notifications.

The importance of behavior-oriented information disclosure could be further seen from the frequency of entity and process information element combinations. Data analysis shows that there are five high-frequency combinations, three of which are combined with behavior, accounting for 80.2% in total. Among them, ‘behavior + patient’ accounted for about 34.7%; ‘agent + behavior’ accounted for about 27.3%; ‘behavior + dative’ accounted for about 18.2%. The higher frequency of ‘behavior + patient’ compared to ‘agent + behavior’ indicates that police departments are more inclined to detail the actions of an agent.

Extract 1 Case 1

.....肖某某(女, 28岁)驾驶湘K牌照小型轿车在娄星区吉星路株山公园东门地段由南往北行驶时[1eBe3lsgt], 与前方谢某(女, 36岁)驾驶的二轮电动车追尾相撞[l1eB3cmT], 谢某衣裤被卡入轿车左前角[e3Sel]。肖某某驾车逃离现场[1B3B1], 致使谢某被车辆拖行[a2iB], 后被执勤交警截停[t1T]。执勤交警随即迅速控制肖某某[1tmB2], 将谢某立即送医救治[2tgB], 同时开展现场调查勘验[cB13].....Xiao (female, 28 years old) was driving a small car with Xiang K license plate from south to north at the east gate of Zhushan Park, Jixing Road, Louxing District, when he rear-ended a two-wheel electric car driven by Xie (female, 36 years old) in front of her. Xie's clothes were stuck into the left front corner of the car. Xiao drove away from the scene, causing Xie to be towed by the vehicle and then stopped by the traffic police. Traffic police immediately controlled Xiao X and sent Xie immediately to the hospital for treatment while carrying out the on-site investigation.
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Extract 1 is from Case 1 concerning information about a car incident in Loudi. In this extract, many process elements appear (e.g., PB, PS, and PT), but by contrast, behavior elements (PB) appear most frequently. Eight behavior information elements are used to describe the actions of Xiao (a party to the case), and there are four kinds of combinations. The combinations of ‘agent + behavior’, for example, ‘Xiao... + drive (驾驶)’ and ‘police... + control (控制)’ talk about the actions of the party and the police,

so as to informing the public the cause of the case and the measures taken by the police departments. To explain the case information clearly, the police department must explain Xiao’s behavior clearly, as Xiao is the main actor leading to the occurrence of the case. Moreover, the combinations such as “behavior + dative,” (scontrol Xiao (控制肖某某)) and “behavior + patient,”(carry out the on-site investigation (开展现场调查勘验)) of the police department who is the agent, inform netizens of police departments’ actions in solving the case.

4.2. Netizens’ major expectations

After conducting word segmentation, high-frequency keywords from netizens’ comments were selected, and a word cloud was generated. And the top 20 keywords by frequency are presented in the table below (see Table 2).

Table 2 Top 20 keywords in word frequency

No.	Keywords	English	Freq.	No.	Keywords	English	Freq.
1	警察	Police	337	11	犯罪	Crime	74
2	通报	Notification	298	12	真相	Truth	66
3	严惩	Severely punish	263	13	处罚	Punishment	64
4	强奸	Rape	194	14	关系	Relationship	61
5	死刑	Death penalty	174	15	结果	Result	59
6	详细	Detailed	136	16	故意	Intentional	58
7	希望	Hope	109	17	视频	Video	57
8	轻伤	Minor injury	80	18	相信	Trust	56
9	问题	Issue	78	19	处理	Handle	56
10	法律	Law	76	20	杀人	Kill	55

As illustrated in Table 2, the most frequent keywords, No.3, 5, 13, 15 and 19 suggest that netizens are highly concerned with how does the police dispose of the case. Keywords such as No. 6, 10 and 12 reflect netizens’ focus on the details and basis of the case. In summary, the comments reveal that netizens have significant expectations about both the WP (what process) and WB (what basis) information of police notifications.

The demand for WP information may stem from the fact that some police notifications conclude with statements like, “The suspect has been detained, and the case is under further investigation”. Such statements are often necessitated by the need for time to investigate the case thoroughly. Therefore, in the early stages of an investigation, police departments can

only release limited WP information, with further details being disclosed after the investigation progresses. Some notifications also reflect the police departments' stance by stating, "Police departments will inform the community promptly about the follow-up progress of the case investigation." However, netizens do not accept this temporality—they push for continuous updates, actively questioning the pause in the flow of information.

Moreover, netizens express significant concern regarding the authenticity of police notifications, which is supported by WB information (see Table 3):

Table 3 Netizen' comments

No.	Netizens' name	Comments	English
1	@筱璃筱璃我爱你	2个月了, 还没个结果? (Case 1)	It's been two months, still no result?
2	@鸡排没肉不好吃	所以怎么判了? (Case 9)	So what was the verdict?
3	@霉国是肮脏的代言	这岂止是致富啊, 这是创造神话(Case 7)	This isn't just getting rich; it's creating a legend. Does anyone believe that he is
4	@童话镇里起风了	月薪三千, 拼死拼活的辅警信吗? (Case 7)	an auxiliary police officer risking his life with a monthly salary of 3,000?
5	@好莱坞肖像摄影师	谁能够给解释一下, 二级轻伤是个什么概念, 属于一个什么级别 (Case 19)	Can someone explain what exactly a second-degree minor injury means? What level is that?
6	@清澈里_Cc	及时赶到? 搞笑呢? 不嫌丢人(Case 27)	"Arrived promptly"? Is this a joke? Aren't you ashamed?

Comments 1 and 2 are from case 1 and 9 respectively. Case 1 is about a traffic accident with a bad impact, and case 9 is about the indecent sexual assault of five minors, both of which have received widespread attention, and the notification ends with "the case is under investigation." Netizens' comments indicate that they pay great attention to the follow-up information or the result of the punishment. Actually, similar comments were made in almost every police notification that drew widespread attention but failed to report the outcome of the case which shows that post-truth police notifications often convey an attitude but lack substantive content, leading to incomplete communication about the case. As a result, whenever a particularly egregious case arises, netizens are eager for "follow-up" notifications that disclose the final outcomes or the updates on previous cases. When these follow-up updates or WP information fail to appear or lack substantial content, netizens grow increasingly frustrated. This dissatisfaction is not

only about the delay but about the perceived withholding of information, where silence or incomplete disclosure functions as a form of control that disrupts the flow of knowledge.

Comments 3 and 4 are from Case 7 concerning the result of an investigation into an Internet celebrity suspected of taking photos with a police helicopter. However, netizens' comments indicate that they do not accept the police department's explanation of the celebrity's wealth, suspecting potential misconduct by her father. The information knots data of this case shows that no WB information knot exists in this police notification. Moreover, Comment 5 is from Case 19 concerning the progress of investigation on the beating case in Tangshan, which reveals that the concept of "slight injury" is not widely understood. During the dissemination of such sensitive cases, netizens tend to focus on the victim's well-being and the perpetrator's punishment. The term "slight injury" may lead some netizens to perceive the judgment as lenient toward the perpetrator, causing dissatisfaction. This reflects an information gap between police departments and netizens regarding the term "slight injury."

Sometimes, police departments used the phrase "promptly" (及时) to modify the verb "arrive" (赶到), indicating that they treated the case seriously and arrived promptly to stop the altercation. However, without a specific time point as basis, netizens may question this explanation with comments like "Is this a joke? Aren't you ashamed?" like Comment 6. Such reactions suggest that netizens doubt police departments' authenticity.

To sum up, if the police notification lacks WB information to support the stated information, they may fail to meet netizens' expectations, potentially undermining the credibility of the notifications.

5. Discussion

Data analysis shows that police notifications function not merely as authoritative announcements but as part of a broader, interactive network of information exchange, where the information is influenced by the decentralized forces of public opinion and social media discourse. The police departments' engagement with netizens goes beyond a simple exchange of top-down notifications; it involves understanding the diverse needs and expectations that emerge from the dispersed voices within the public sphere

(Li, 2019). This decentralized interaction reflects the principles of rhizomatic communication.

For example, although there is a rough pattern when writing police notifications, the information development in a police notification seems to correlate with the level of public attention a case receives on Weibo, suggesting a responsive, rhizomatic pattern in the way police departments interact with public discourse. The more the case resonates with netizens, the more branches of information are produced and shared, echoing the rhizomatic idea of multiplicity and openness. Within this ever-expanding network of social interaction, police notifications serve as a node, playing the role of addressing public concerns, dispelling rumors, and providing case information to the public.

According to Li, M. (2022), police departments need to explain to the audience the cause of the case and the measures taken by the police departments when releasing police notifications on Weibo. Therefore, when describing the case, it is necessary to emphasize the behavior of the parties and explain the development of the matter; After responding to the police, it is necessary to highlight the conduct of the police departments, reassure the public and accept supervision. The dominance of behavior-oriented elements reflects a narrative strategy that fosters the understanding of events, focusing on actions and their consequences within the broader social landscape (Du, 2014).

Netizens' demands for WP and WB information knots further demonstrate the networked nature of information consumption. These demands reveal a need for precision and authenticity, with netizens expressing high expectations for the accuracy and integrity of the information in police notifications. The absence of key content reduces the accuracy of police notifications, allowing public opinion to ferment (Chen, 2023). To improve notifications, police departments should recognize the multiplicity of voices and to adopt a more flexible, open approach to communication, one that acknowledges the shifting, interconnected nature of public interaction.

By addressing public's needs and incorporating feedback, police departments can increase public satisfaction, and ensure that the dynamic relationship with the public continues to evolve within the legal framework. In doing so, the following strategies can be employed.

Firstly, police departments should work to supplement the information gaps as stated in chapter 4 by supplementing WP and WB information

knots, which serves to create multiple entry points for understanding, enhancing the overall informational network.

Due to the working departments of the investigation and trial of the case may be different, the responsible subjects of the disclosure of information should bear the corresponding responsibilities, and use the influence of the Weibo account of government affairs to apply hot search topics to remind netizens (Chen, 2023). In other words, no matter whether the case is still hot or not, police departments should disclose follow-up WP information to netizens promptly. What’s more, since insufficient WB information knots may make police notifications not convincing or trustworthy, police departments should pay attention to enriching WB information knots to improve the persuasiveness of information. For instance:

Extract 2 Case 30

<p>...<WB>依据《中华人民共和国治安管理处罚法》第四十三条第一款之规定, <WP>公安机关对杨某某处500元罚款...</p>	<p>...Pursuant to Article 43, Paragraph 1 of the Law of the People’s Republic of China on Penalties for Administration of Public Security, the Public Security Bureau has imposed a fine of 500 yuan on Yang...</p>
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This extract is from Case 30 concerning the handling of the fight on the high-speed train. In this notification, a WB information knot containing specific laws is employed to support the WP information knot, which can help to increase the credibility and rationality of police notifications to a certain extent.

Secondly, since vague information, for example “promptly”, disrupt the flow of knowledge, leading to fragmentation and disconnection, police departments should try to apply more specific information to make the notification become a more robust node in the informational web, contributing to the creation of a transparent and trustworthy network.

To be specific, police departments should be transparent, inform netizens with the exact time of cases and police departments’ work, accept the supervision and evaluation of netizens. For example:

Extract 3 Case 5

<p>8时02分, 值班老师拨打110报警 [t1Bb3]。 8时09分, 辖区派出所民警抵达学校 [ts1B1]...</p>	<p>At 8:02 AM, the duty teacher dialed 110 to report the incident. By 8:09 AM, police officers from the local precinct had arrived at the school...</p>
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This extract is from Case 5 concerning the results of an investigation into a death in a student dormitory. In this extract, the police department released specific time points to the public (e.g., 8:02 AM, 8:09 AM) instead of the vague manner information element, for example “promptly” to describe their behaviors. It is clear that the police officers responded in seven minutes, fully demonstrating the working speed of police departments. Netizens’ comments of Case 5 help to prove it (See Table 4):

Table 4 Netizen’ comments of Case 5

No.	Netizens’ name	Comments	English
1	@可惜你就是水瓶座	为罗江警方点赞 这个才是详细逻辑清晰的通报	Thumbs up for Luojiang police. This is a detailed and logical notification.
2	@一只鱼908	这警情通报太详细了[大拇指]	This police notification is so detailed. [Thumbs up]
3	@浪迹天涯艾小欣	这才是让人信服的官方通报	This is a convincing official briefing.

As shown in Table 4, many netizens gave complimentary comments to the police notification of Case 5 for its details and clarity. Although it may not be the only reason, using specific information elements instead of general information elements is more helpful to convince netizens because this kind of information is sincere and integrity.

All in all, in the digital age, law does not exist in isolation but is interwoven with social practices in a continuous flow of information. Police departments are encouraged to be all ears to the public and supplement and improve their notifications within the confines of legal norms while embracing the flexibility of rhizomatic dissemination. By employing the Rhizomatic Theory, the flexible disclosure strategies help a lot to improve police departments’ service and public satisfaction in response to public engagement.

6. Conclusion

This study highlights the complexities and opportunities associated with adapting police notifications to the decentralized and interactive nature of social media. By integrating Discourse Information Theory (DIT) and Rhizomatic Theory, this study underscores the necessity for a communication approach that is both transparent and responsive. Through

data analysis, practical recommendations including enhancing information disclosure, ensuring timely updates, and fostering public trust through clarity and accountability are put forward.

As a preliminary study of police notifications in China, this study hopefully contributes to the growing literature. From a practical standpoint, this study provides valuable insights into the informational characteristics of police notifications, offering a framework to understand netizens' demands for transparency and clarity. It also presents actionable strategies for addressing public inquiries and concerns, thereby enhancing the quality of public service. These efforts have the potential to improve public satisfaction, contribute to a harmonious online environment, and promote social stability—objectives that align with the broader goal of fostering a more just and transparent communication process between the police and the public.

On a theoretical level, this study extends the application of DIT and Rhizomatic Theory to the context of police discourse on social media. It highlights the utility of rhizomatic frameworks in analyzing the decentralized, fluid, and interconnected nature of digital public communication, offering a novel lens through which to examine the evolving dynamics of police-public interactions.

Future research could build on this study by employing corpus-based methods to analyze the discourse of police notifications on Weibo, thereby identifying more reliable patterns and linguistic rules from larger datasets. Additionally, developing emotional dictionaries based on netizens' comments could enhance the responsiveness of police notifications, enabling law enforcement agencies to better align their messaging with public concerns. Such advancements would further refine the interactive processes between the police and the public, contributing to more effective communication and fostering trust in law enforcement services.

Acknowledgements

This paper is part of the research program sponsored by the Department of Social Sciences of the Ministry of Education (22YJC740089). Our sincere thanks go to editors and anonymous reviewers for their valuable comments and suggestions.

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January 8, 2021: Twitter suspends @realDonaldTrump permanently

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DOI | 10.14195/2184-9781_6_5

ABSTRACT

Damages, traces, risks — Algorithm = logic + control — Territories of exception and emergence — Mapping digital sovereignty — Power and responsibility — Meantime, the EU Digital Services Act — @ReSet:

people like morbidity — Where rights are not ... and: eating the dogs.

KEYWORDS

Rhizome, @realDonaldTrump, Twitter, Social media, online intermediary liability, safe harbours, 230 CDA, Digital Services Act, Niklas Luhmann

Once upon a time, in a realm online known as Twitter, @realDonaldTrump made data whirlwinds. Huge, colourful, convoluted data flows spiralled through the realm for them. And their pronouns were they/them because the data whirlwind maker were not I, you, he, she, it, nor we. They achieved massive engagement regardless of their choice of characters, but usually deployed “MAGA” or “Make America Great Again.” America was an offline realm also known as US, or the USA. Apparently, the offline realm of America had been great once, and not-great later. And @realDonaldTrump wanted America’s past greatness back. In the online realm that was Twitter @realDonaldTrump were a data whirlwind maker, a data vortifex, and Donald Trump was a physical representation for data, a physicality. Offline realms were, still are, about physicalities. To achieve MAGA, @realDonaldTrump needed data tornadoes and physicalities, in the numbers of tens of millions, voting for Donald Trump’s physicality at the offline platform of the American Presidential Election 2020. @realDonaldTrump and Donald Trump may have a similar name, coincident to a point, but exclusive sourcing should not be assumed in either case. And they kept swirling and steering data until, after a number of iterations and cycles, the realm of Twitter switched off the formidable @realDonaldTrump permanently ... for the time being ... for whatever time means.

It was morning in DC, on *January 8, 2021*, when @realDonaldTrump tweeted:

“The 75,000,000 great American Patriots who voted for me, AMERICA FIRST, and MAKE AMERICA GREAT AGAIN, will have a GIANT VOICE long into the future. They will not be disrespected or treated unfairly in any way, shape or form!!!”¹

And:

“To all of those who have asked, I will not be going to the Inauguration on January 20th.”²

Afterward, Twitter suspended @realDonaldTrump. The decision came with an announcement on the corporate website that concluded:

“our (Twitter’s) determination is that the two Tweets above are likely to inspire others to replicate the violent acts that took place on January 6, 2021, and that there are multiple indicators that they are being received and understood as encouragement to do so.”³

Violent acts beyond Twitter on 01/06. Meantime, inside Twitter, @realDonaldTrump had, allegedly, violated Twitter’s rules repeatedly; and for that the account had been warned and suspended for 12 hours. Twitter’s announcement also brought to light an indeterminate past, going back years, in which @realDonaldTrump, a world leader’s account, had been above the rules, but “cannot” use Twitter to incite violence. Twitter also overviewed the context around @realDonaldTrump’s tweets after 01/06: ongoing tensions in the US; an uptick in the global conversation; a violent assault allegedly planned to happen on January 17th; and, the inauguration of the 46th President of the US on January 20th. The announcement on 01/08 also linked to rules. The first link, “public interest framework,” led to a company blog entry titled “World Leaders on Twitter: principles

¹ <https://www.presidency.ucsb.edu/documents/tweets-january-8-2021>

² See note 1.

³ https://blog.x.com/en_us/topics/company/2020/suspension

& approach.” The second link, “Glorification of violence policy,” led to Twitter’s rules and policies cover page, and included links to more than 60 different texts.⁴ However, Twitter’s announcement did not mention the 12-hour suspension of @realDonaldTrump on 01/06; and did not clarify how, how much, or how often @realDonaldTrump had been “above the rules.” Twitter’s announcement on 01/08 was mostly about how undisclosed others were likely to react to @realDonaldTrump’s tweets based on “indicators” that were not sustained by evidence. Twitter’s recital includes facts, allegations, and assumptions but omits, consciously, any judgment about the will of the one (or the many) behind the account, be it to incite violence or otherwise. Will and intent are abstract to physicality, and transcend data. Twitter acted as a self-regulating and enforcing body within the factual limits of its own platform, subject to its own rules, which were abundant but not entirely mandatory for world leaders’ accounts. From the election in November 2020 until 01/08, Twitter tagged, warned about, or removed many tweets from @realDonaldTrump.⁵ When this active monitoring started @realDonaldTrump begun tweeting on Section 230 as a gift to private companies such as Twitter.⁶ After 01/08, @POTUS tweeted:

“Twitter may be a private company, but without the government’s gift of Section 230 they would not exist for long.”⁷

To the media platform that was Twitter, @realDonaldTrump was a big account, and Donald Trump a loudspeaker who became a risk and a foreseeable liability. The certainty that if (when) future harms occur, Twitter will hold no liability means absence of risk and lack of contingency. Certainty on the uncertain. Twitter was immune by law under Section 230 of Title 47 of the US Code, “protection for private blocking and screening of offensive material,” that had been approved with the Communications Decency Act of 1996 (CDA) and, in particular, subsections §230(c)(1) and §230(c)(2)(a) whereby:

⁴ <https://web.archive.org/web/20210108023529/https://help.twitter.com/en/rules-and-policies>

⁵ <https://www.politico.com/news/magazine/2021/01/09/trump-twitter-ban-suspended-analysis-456817>

⁶ <https://x.com/realDonaldTrump/status/1333965375193624578>

⁷ <https://www.theverge.com/2021/1/8/22221683/trump-tried-to-evade-his-ban-with-potus-but-those-tweets-were-instantly-deleted>

“§230(c)(1): No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider (...)

§230(c)(2)(a): No provider or user of an interactive computer service shall be held liable on account of (...) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”

The foregoing portions of Section 230, Title 47, US Code, or just *Section 230* or §230, mean online services or platforms containing User Generated Content (UGC), as long as they act in good faith (a good Samaritan) on objectionable materials, are not liable for harm or damages caused by their content (UGC), or any content they may tag, restrict, remove, or suspend. The rationale for this immunity is the service/platform neither publishes nor speaks the UGC: but the user does. The service can remain not-liable while restricting constitutionally protected expressions, as long as they are objectionable. Later, in *Barnes*,⁸ the Ninth Circuit established a three-part test for immunity under §230: (1) is the defendant a provider or user of an interactive computer service?; (2) does the underlying cause of action seek to treat the defendant as a publisher or speaker of the allegedly violating content?; and (3) was the content provided by another information content provider? If the answer to each of these questions is “yes” then the defendant is legally immune under §230, a single “no” and §230 offers no protection. The test offers no help to set apart the unconstitutional from the objectionable, as constitutionality is beyond §230’s scope, so it is of no concern to online services. Additionally, the test was devised for claimants and defendants opposing each other before a court of justice. Its application towards companies, individuals, or automated agents who interact and integrate as providers of content, services, and intermediate services in the online market is not clean-cut.

Breathe in. Breathe out. By breathing, air becomes oxygen inside your body and carbon dioxide outside your body. Physiological processes can

⁸ *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009).

be described in terms of input and output. Input and output work online as well. @realDonaldTrump *inspired data, expired more data*. To Shannon, data means information in a byte, values (such as “0” or “1”) that measurably reduce uncertainty and change the entropy of information.⁹ Law defines data in different ways. The US Code defines data as recorded information, regardless of form or the media on which the data is recorded;¹⁰ The EU Data Act defines “data” as any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audio-visual recording.¹¹ To US laws, data means record; and to the EU’s, data means representation. Also to Shannon, data aggregates to form messages, and reproducing messages selected at one point through a conduit at another point means communication. Source, channel, and destination. No *meaning*. While collaborating with Shannon, Weaver introduced a broader definition of communication: “all of the procedures by which one mind may affect another.”¹² To Weaver, communication requires the solution to three problems: technical, semantic, and effectiveness. That happens when symbols: (i) are accurately transmitted; (ii) properly convey meaning; and, (iii) achieve the desired change. To Weaver, communication is mind-changing meaning transmitted technically through symbols. Later, Luhmann said information means *difference in communication*. And communication requires the combination of three selections: information, utterance, (mis)understanding in order to make difference in society. In Luhmann’s words:

“communication just like life and consciousness (...) is an emergent reality, a state of affairs *sui generis*. It arises through a synthesis of three different selections, namely, selection of information, selection of the utterance of this information, and a selective understanding or misunderstanding of this utterance and its information.”¹³

⁹ Shannon & Weaver (1964) p. 48–53.

¹⁰ 44 U.S. Code Chapter 35: Subchapter I, Federal Information Policy: §3502 Definitions: (16) Data.

¹¹ Article 2.1 of the Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data.

¹² Shannon & Weaver (1964) p. 3.

¹³ Luhmann (1992) p. 252.

Online communication is sustained through data processes defined by algorithms, which are sets of instructions between two different states: the initial situation (input or problem), and the final situation (output or solution). In the 1970s, the early days of the online world, algorithms were “merely a series of mathematical calculations or mental steps” that do not constitute a patentable process to the *US Supreme Court (SCOTUS)*¹⁴ and, later in the same decade, meaning and purpose: “Algorithm = Logic + Control” as formulated by Kowalski.¹⁵ Could control mean property? World politics broadly believed, as stated into laws, that no one can claim property on what is (or should be) universal, and math is (mostly) universal, in the words of SCOTUS:

“It is admitted, that a principle is not patentable. A principle, in the abstract, is a fundamental truth; an original cause; a motive; these cannot be patented, as no one can claim in either of them an exclusive right. Nor can an exclusive right exist to a new power, should one be discovered in addition to those already known. Through the agency of machinery a new steam power may be said to have been generated. But no one can appropriate this power exclusively to himself, under the patent laws. The same may be said of electricity, and of any other power in nature, which is alike open to all, and may be applied to useful purpose by the use of machinery.”¹⁶

That was about steam power, when it was news to industry. Almost a century and a half later, when the power of algorithms was new, the Federal Circuit said an algorithm can be patentable if or when it produces useful, concrete, and tangible results.¹⁷ The mathematical-algorithm exception. But just a year later, the same Court said algorithms were undefined, non-statutory mathematical subject matter:

“Courts have used the terms ‘mathematical algorithm,’ ‘mathematical formula,’ and ‘mathematical equation,’ to describe types of nonstatutory

¹⁴ *Gottschalk v. Benson*, 409 U.S. 63, 93 S.Ct. 253 (1972).

¹⁵ Kowalski, Robert (1979) p. 1.

¹⁶ *Le Roy et al. v. Tatham et al.*, 55 U.S. (14 How.) 156 (1853).

¹⁷ *State St. Bank & Trust Co. v. Signature Fin. Group*, 149 F.3d 1368 (Fed. Cir. 1998).

mathematical subject matter without explaining whether the terms are interchangeable or different.”¹⁸

Be it around steam engines or algorithms: principles, fundamental truths, original causes, motives may be used “with such a want of precision (...) as to mislead.”¹⁹ This want of precision extends to patents on software and computer programs which, similar to patents on algorithms, have had an eventful story. Communication may be a universal, uncontrollable, inappropriate matter, but Twitter commoditized communication with the means under its control through 2.438 patents.²⁰ @realDonaldTrump’s physiology was Twitter’s. Twitter controlled the engagement on every account, including @realDonaldTrump, through metrics.²¹ Their massive engagement increased the relevance of both Twitter’s and MAGA’s enterprises.²²

Six days after 01/08, @jack²³ first tweeted about Twitter’s decision to suspend @realDonaldTrump permanently. In their opinion, Twitter handled an “extraordinary and untenable circumstance” in the right way because “offline harm as a result of online speech is demonstrably real.”²⁴ Individuals are both empowered and limited by the architecture, businesses, and services of online platforms.

Barnes started receiving phone calls, emails, and visits from people expecting to have sex with them back in 2004. Not in a nice way. *Barnes* felt a target. A former partner was publishing fake profiles on Yahoo with *Barnes*’ contact information, explicit pictures, and open invitations. Yahoo was informed of the situation and did nothing. Eventually, when *Barnes* was about to report the situation on local news, Yahoo’s Director of Communications contacted *Barnes* and assured them Yahoo would deal with the situation. But Yahoo did not. Later in court, Yahoo claimed immunity under §230.²⁵

¹⁸ AT&T Corp. v. Excel Communications, Inc., Excel Communications Marketing, Inc., and Excel Telecommunications, Inc., 172 F.3d 1352 (Fed. Cir. 1999).

¹⁹ See note 16.

²⁰ Twitter Inc. controlled 2.438 patents until 2023. Source: <https://insights.greyb.com/>

²¹ <https://developer.x.com/en/docs/x-api/metrics>

²² <https://www.mcclatchydc.com/news/politics-government/white-house/article153467119.html>

²³ Coincident (to a point) with Jack Dorsey (then) Twitter’s CEO. Again, exclusive sourcing should not be assumed.

²⁴ <https://x.com/jack/status/1349510770992640001>

²⁵ *Barnes*. See note 8.

Snapchat's speed filter was released in 2013. The filter allowed Snapchat users to upload images showing their speed in real-time to other users. Four years later, somewhere in Wisconsin, Davis (17) was driving a car with Brown (20), in the passenger seat, and Morby (17) in the back seat. Brown opened the filter. The car crashed into a tree when driving at 113 MPH (approximately 182 KMH). Morby's and Brown's families claimed against Snapchat. Davis' did not. The case is known as "*Lemmon*" after Morby's mother family name; it was argued on February 11, 2021.²⁶ Later, the Ninth Circuit's ruled²⁷ that the claim did not treat Snapchat as a publisher (or speaker) of other users' videos but as a manufacturer of the speed filter: a product. Answer to question (2) of the 2009 test was "no". §230 did not provide Snapchat with immunity against *Lemmon* because the manufacturer is liable for the risk its product creates or enhances, and has to exercise due care in supplying products that do not present an unreasonable risk of injury or harm. It was the filter itself that created the risk and not other users' videos. A similar case in Georgia, *Maynard v. Snapchat*,²⁸ led the Supreme Court of Georgia to rule against the motion to dismiss that lower courts had granted, because the speed filter is a product. Snapchat's speed filter had been criticized,²⁹ but Snapchat kept it online until a month after the *Lemmon* decision.

Vargas was looking for a home in New York and not getting good housing ads on Facebook in the late 2010s. They went to Court and the Ninth Circuit concluded that Facebook's Ad Platform was "a patently discriminatory tool" that does not "become 'neutral' simply because the tool is also offered to others."³⁰ In *Vargas*, using algorithms to identify certain users' characteristics (such as being Hispanic, female, and a single parent), including the said characteristics into its Ad Platform, and then promoting the effectiveness of such advertising tools to particular advertisers constituted material contribution to the (illegal) discrimination and excluded immunity under §230. Immunity was partially excluded in another case related to living

²⁶ <https://www.youtube.com/watch?v=o6plmveXOPo>

²⁷ *Lemmon v. Snap Inc*, 995 F.3d 1085 (2021).

²⁸ *Maynard v. Snapchat, Inc.*, Case No. S21G0555 (decided March 15, 2022).

²⁹ <https://www.npr.org/2021/06/17/1007385955/snapchat-ends-speed-filter-that-critics-say-encouraged-reckless-driving>

³⁰ *Vargas v. Facebook, Inc.*, No. 21-16499, 2023 WL 4145434 (9th Cir. June 23, 2023).

places, Roommates,³¹ but the defendant was eventually acquitted because discriminating about who you share a living place with is legitimate.

Gonzalez and *Alassaf* died in terrorist attacks by the Islamic State (ISIS) in Paris (2015) and Istanbul (2017), respectively. Their families claimed in court against Twitter, Google (and others) for making ISIS-related content accessible to the masses. In 2023, the hearings of the SCOTUS in *Gonzalez v. Google*³² included a variety of observations in connection with algorithms, data, and neutrality.³³ According to Google's counsel, YouTube recommendation algorithm helps users find a "proverbial needle in a haystack" and is essential to navigate the vastness of content on the platform. Using the same algorithms to direct users to cooking videos and ISIS propaganda means neutrality to Justice Thomas. If the algorithm is the same, yet the results are different, the difference seems to rely on the user only. However, does neutrality mean applying the same set of procedural rules to different situations? Do rules have the same meaning in different contexts? Justice Gorsuch suggested algorithms may not be inherently neutral. But as reported by Howe, he attended the hearing by telephone and was feeling "*a bit under the weather*."³⁴ Justice Jackson said §230 was intended to shield platforms from liability for blocking offensive content, not for promoting it. Justice Kagan concluded SCOTUS' attending justices were "not, like, the nine greatest experts on the internet."³⁵ Both cases were finally decided on May 18, 2023. *Gonzalez* was sent to the lower court;³⁶ *Twitter* fell out of the scope of terrorism.³⁷ No material pronouncements were made on §230. Did Twitter, Facebook and Google abetted terrorism by letting ISIS use their platforms? Justice Thomas answered:

"As presented here, the algorithms appear agnostic as to the nature of the content, matching any content (including ISIS' content) with any user who is more likely to view that content."³⁸

³¹ Fair Housing Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157 (9th Cir. 2008).

³² *Gonzalez v. Google LLC*, 598 U.S. 617 (2023).

³³ https://www.supremecourt.gov/oral_arguments/audio/2022/21-1333

³⁴ <https://www.scotusblog.com/2023/02/not-like-the-nine-greatest-experts-on-the-internet-justices-seem-leery-of-broad-ruling-on-section-230/>

³⁵ See note 34.

³⁶ See note 32.

³⁷ *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023).

³⁸ See note 37.

Anderson (10) died accidentally in December, 2021, while attempting the “Blackout Challenge” known to them through their “For You Page” at TikTok. The majority opinion of the Court – the Third Circuit – stated that the selection and presentation of content (as in the For You Page) “qualifies as ‘speech activity’ ... [whether] the content comes from third parties [or] it does not.”³⁹

As Banksy put it “there are no exceptions to the rule that everyone thinks they’re an exception to the rules.”⁴⁰ The business model of UGC platforms based on advertising consists of obtaining revenues from announcers based on the value (relevance) of the users’ engagement that is measured, and sustained, through algorithms. Social media platforms make communication on “real” time, instantaneous, global, and data-driven. Meantime, data runs on logic, pattern, probability, and algorithms. Online realms such as Twitter monetize the physicality’s drive for the exceptional through very unexceptional means. Algorithms are not alien to meaning. The metrics for engagement online result in nothing but useful, concrete, tangible pricing for the allocation of third-party advertisements.⁴¹ Also, algorithms have noticeable impact at Luhmann’s three selections of communication.⁴² Because every user posting content wants engagement, their selection of information will regard trends in the platform that are relevant to their content. At utterance, the algorithms will determine the information’s presentation, format, and archive (e.g. in Twitter users would microblog, in YouTube videoblog). Algorithms will measure engagement to allocate promotional value to the content. In another way to put it, the algorithm will decide how the potential customers of the announcer will mis(understand) the content for the limited purpose of buying the announcers’ goods or services. UGC platforms whose business model is based on advertising (e.g. Twitter, YouTube, Facebook) may favour free speech, but their business is selling their users’ engagement to advertisers. By definition, their business model makes communication context to engagement.

³⁹ *Anderson v. TikTok Inc*, No. 22-3061 (3d Cir. 2024) quoting *NetChoice*, 144 S. Ct. at 2402 quoting *Ark. Educ. Television Comm. v. Forbes*, 523 U.S. 666, 674 (1998).

⁴⁰ Banksy (2005) p. 30.

⁴¹ See note 21.

⁴² See note 13.

To Luhmann, “society exists through its communications.”⁴³ Society is an autopoietic system of communication where autopoiesis is *differentiation* (through function, operation, program, and code) that creates different subsystems such as legal, media, politics, economics, etc. To each system, every other system is environment. “Physical environment” means people, individuals, and everything differentiated as physicality. Evolution results from operations within systems and friction amongst system(s) and environment. To Luhmann, social systems “*irritate*” one another. Moeller explains the use of the term irritation by Luhmann:

“In German, however, to irritate (*irritieren*) does not mean ‘to bother’ or ‘to perturb’, but, more precisely, ‘to distract’ or ‘to perturb’. ‘Perturbation’ might therefore be a less misleading translation. Luhmann uses this somewhat odd term to avoid the implication of any ‘simplistic’ cause-effect or input-output pattern”⁴⁴

To Luhmann, systems are operationally closed but react to one another, which interaction is more complex than input-output and can be translated as “irritation” as expressed by Moeller. Also according to Luhmann, if “irritation” is constant and intense enough, then the irritation becomes “coupling.” And, “if a system presupposes certain features of its environment on an ongoing basis and relies on them structurally”⁴⁵ it is called “*structural coupling*.” In the rhizosphere, where media and economy coexist in a physical environment, these elements are bound in a *systemic structural throuple* where: (i) physicality irritates media by people being morbid, and economy by people being greedy; (ii) media irritates economy by conditioning consumers’ choices, and the physicality by incentivizing people’s morbidity; and (iii) economy irritates media by holding the negotiated value of money, and the physicality by holding the perceived value of money. In balance: people get speech, but free-speech is commoditized; media gets relevance, if advertised-oriented; economy gets sales and revenues, but becomes dependent on media. These mutual irritations are structural to human societies because individuals are morbid and greedy in their own way; and

⁴³ Luhmann (2004) p. 25.

⁴⁴ Moeller (2006) p. 221.

⁴⁵ Luhmann (2004) p. 382.

corporations and institutions are morbid and greedy in a collective, mostly immune, way. In *Barnes*, Yahoo did nothing to stop a former partner's vicious revenge. In *Gonzalez and Twitter*, media platforms facilitated terrorist content to those who are most likely to view it, while terrorists' attacks kill people. In *Vargas*, Facebook placed a lower value on housing advertisements to Hispanic single mothers. In *Lemmon*, Snapchat commoditized people's attraction to careless driving and appetite for show. In *Anderson*, TikTok commoditized people, mostly minors, blackout for show. In all these cases, the legal system mediated the outcomes of the physicalities' morbidity and greediness and the systems of media and economy. In *Barnes, Gonzalez, and Twitter*, disappointment was confined to the physical environment. In *Vargas, Lemmon, and Anderson*, the legal system disappointed the media.

The function of the legal system within society, according to Luhmann, is "to maintain normative expectations in the face of disappointment"⁴⁶ and:

“(..) law fails to carry out its function only when its expectations cease to be normative. The normativity of expectations lies in the distinction between normative and cognitive. Cognitive expectations are ones where one learns from disappointment: it will never rain in July. Normative expectations are where one does not: it is illegal to park on double yellow lines.”⁴⁷

In each and every case of offline harm created by online speech with no legal consequences to the media, or (indirectly) to the announcers, Section 230 serves its function. When the physicality is substantially disappointed, if resources are available, the physicality expects to make media liable through the legal system. And this expectation is normative, as it is governed by damage and resources, not by knowledge. Theoretically: if the legal system consistently disappointed the media (UGC online platforms), to the point where no other expectation would exist, Section 230 would no longer have a function. The assumption that 230 is the one, only, option for the free internet (whatever that might be) will continue to be challenged over time. Businesses normally minimize, manage, risk through a variety of means including insurances.

⁴⁶ Luhmann (2004) p. 9.

⁴⁷ Luhmann (2004) p. 16.

In the data realm that was Twitter, no algorithm made the decision to suspend @realDonaldTrump but several individuals did, as reported by The New York Times⁴⁸ and The Free Press.⁴⁹ @realDonaldTrump was a data vortex, a MAGA speaker, a giant voice online for Donald Trump being elected at the US presidential election 2020. Their exclusion from Twitter transcended boundaries, territorial and otherwise, for it was a political act. As Justice Thomas decided on April 5, 2021:

“(...) in terms of power the disparity between Twitter’s control and Mr. Trump’s control is stark (...) Twitter barred Mr. Trump not only from interacting with a few users, but removed him from the entire platform, thus barring all Twitter users from interacting with his messages.”⁵⁰

The unrestricted faculty to control who/what is included or excluded within a scope, or a realm, is a sovereign faculty. Sovereignty has been the states’ since the 16th century. As pictured in Hobbes’ Leviathan’s frontispice: the sovereign, made of people, holds the sword in one hand and the crosier in the other. The power of the sovereign is made of his people, and army (force) and clergy (faith) are institutions by his hands. Formulas still in use: in God we trust, so help me God, (vox populi) vox Dei. In an increasingly interconnected world, sovereignty includes realms online and a variety of supra-national agents (such as international organizations or corporations). In this landscape, agents and subjects of power, private and public spheres, real and @real, are being redefined. Sovereignty in the digital age may still be the attribution of the State by law, yet such exercise is full of caveats and compromises including the massive power over data that online businesses hold. The suspension of @realDonaldTrump was the outcome of a complex interplay of factors including public outcry, legal considerations, and corporate strategy.

In the early 20th century, when America was a new power, Hohfeld developed a judicial reasoning artifact upon the fundamental legal conceptions of power, immunity, right, and privilege based on the idea that these legal conceptions couple with correlatives and exclude opposites.

⁴⁸ <https://www.nytimes.com/2021/01/16/technology/twitter-donald-trump-jack-dorsey.html>

⁴⁹ <https://www.thefp.com/p/why-twitter-really-banned-trump>

⁵⁰ Biden (replacing Trump) v. Knight First Amendment Institute No. 20–197. Decided April 5, 2021.

Ideally, it would help legal reasoning for consistency and foreseeability. In particular: power coexists with liability, and excludes disability. In addition:

“a (legal) power is one’s affirmative ‘control’ over a given legal relation as against another; whereas an immunity is one’s freedom from the legal power or ‘control’ of another as regards some legal relation.”⁵¹

Power as control, immunity as freedom. Hohfeld’s artifact brings light to the difference between the absence of liability and immunity. The first one belongs with rules under which a subject (be it a claimant or a defendant) should not be held responsible for a damage because they did have no control in the causation of the said damage. Courts can declare Samaritans non-liable for the damages they may cause because they do the right thing or, at the very least, they intend to. Same for the messenger of bad news. As Spiderman’s uncle famously pondered in 1962: “with great power comes great responsibility.” Some powers exceed courts of justice. The most-abled, the ones most in control. Immunity means there is no jurisdiction to impose liability on superheroes, gods, or sovereigns. Immunity and non-liability are substantially different. Under the rule of God, he creates evil but is immune for evil deeds by mortals, whom he also created. Under the rule of the kings of the Middle Ages *rex non-potest peccare*: the king can do no wrong. This kind of immunity of the sovereign (the Sovereign Immunity) is an early seed of the current immunity of the Government and its officials. Exclusion is power: a classic sovereign prerogative. Internet access providers cannot discriminate on access by users to the net. They are paid by users (not announcers), and their business model is alien to how users engage with content. Net neutrality is key to the Internet, and it is based on powerlessness and lack of control by access providers. Net neutrality to internet access providers is different from algorithmic neutrality to UGC platforms.

Donald Trump created @realDonaldTrump to promote his appearance on a TV show,⁵² then he mastered Twitter:

⁵¹ Hohfeld (1919) p. 60.

⁵² <https://time.com/5412016/donald-trump-realdonaldtrump-twitter-first-tweet/>

“My use of social media is not Presidential – it’s MODERN DAY PRESIDENTIAL. Make America Great Again!”⁵³

Twitter happened to Donald Trump, but @realDonaldTrump happened to Twitter, in just as much. Twitter, as a company, could not be neutral towards one of its most engaging accounts.⁵⁴ Caveat emptor. Twitter, the Samaritan, had a high interest in the traveler, be it Donald Trump or @realDonaldTrump. If Twitter had indeed been neutral to any of them, it would not have behaved like a business.

The US *gifted* §230 to online platforms, such as Twitter. The EU’s bestowed Article 14 of the E-Commerce Directive (ECD).⁵⁵ Sanctioned in 2000, the ECD had the main purpose of removing the internal barriers to online commerce. It also intended to promote healthy competition while defending consumers’ rights. One of its core principles is online platforms that host UGC should not be held liable for content created by users as long as they behave diligently and collaborate with authorities. The intent to ensure the provision of cross-border online services without undue regulatory burdens is clear. But the ECD’s reliance on Member States to enforce the framework led to varying standards. Also, the increased relevance and accessibility of online platforms magnified both the scale and nature of illegal activities online. On December 15, 2020, the European Commission proposed two regulations: the Digital Services Act and the Digital Markets Act. The Digital Package. Executive Vice-President Vestager introduced the following slogan with the proposal: “and of course, what is illegal offline is equally illegal online.”⁵⁶ On November 25, 2021, when the Council of the EU agreed to the Commission’s proposal, they published “what is illegal offline should be illegal online.”⁵⁷ In accordance with @EU_Commission, the slogan became a reality in April 2022.⁵⁸ Two years later, @vestager

⁵³ <https://x.com/realDonaldTrump/status/881281755017355264>

⁵⁴ <https://www.dw.com/en/donald-trump-loses-social-media-megaphone/a-56158414>

⁵⁵ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ 2000 L 178/1 (e-Commerce Directive or ECD).

⁵⁶ https://ec.europa.eu/commission/presscorner/detail/de/statement_20_2450

⁵⁷ <https://www.consilium.europa.eu/en/press/press-releases/2021/11/25/what-is-illegal-offline-should-be-illegal-online-council-agrees-on-position-on-the-digital-services-act/>

⁵⁸ https://x.com/EU_Commission/status/1517762638037540865

formulated: illegal offline = illegal online.⁵⁹ While the Digital Package is mandatory throughout the EU without national transposition, until 2024 the EU's interventions in the Digital Sector total 110 normative initiatives, and approximately 80 recognized entities (e.g. EU institutions, agencies, independent bodies, networks, boards, advisors and organisations), through 12 differentiated areas.⁶⁰ The Digital Package imposes duty of care obligations on the platforms in order to balance the immunity privilege. Where engagement means relevance, regulatory compliance is thought to balance corporate strategy.

In another online realm, called YouTube, users' short videos are rated through views, comments, likes, shares, and other criteria.⁶¹ YouTube's metrics looked good to @ReSet who accumulated 124.410.846 views, 1.161.989 subscribers, and 82 videos of (so-called) challenges from 2014 to 2017. This engagement paid to @ReSet's administrator and content creator, a physicality known as Kanghua Ren, the amount of 2.181,51 € in the first quarter of 2017.⁶² The amounts paid to Kanghua Ren through other periods or gained by YouTube via @ReSet are unknown. In January of that year, @ReSet published a video of Kanghua Ren offering cookies filled with toothpaste to a homeless person. This video is unsurprising to @ReSet as the account usually uploaded challenges such as torturing cats or offering feces for food. But the toothpaste cookies video received substantial backlash online. Kanghua Ren was quick to remove it, but still worried this may have further negative effects to @ReSet. So Kanghua Ren went back to the homeless person and, in compensation for their trouble, offered them 300 € and doing another video. Barcelona's local law enforcement agency intercepted Kanghua Ren when he was making the offer, and the Barcelona City Council pressed criminal charges against him. Eventually, he was on trial and said: "... *hago cosas para dar show, a la gente le gusta el morbo.*"⁶³ A quick translation into English could read: "I do things for show. People like morbidity." But Spanish *morbo* includes things visceral, bizarre, revolting, or attractive (e.g. a car accident, a crime scene, or something/someone attractive). If you say in Spanish that something *te da morbo* you mean you

⁵⁹ <https://x.com/vestager/status/1758826741286543428>

⁶⁰ The National Board of Trade Sweden (2024) p. 19-20, 38-39.

⁶¹ <https://developers.google.com/youtube/analytics/metrics>

⁶² Decision 243/2019 of Barcelona's Criminal Court number 9 as of May 29, 2019.

⁶³ Quote in Spanish (see note 62).

are attracted to the thing in a darkly way. English sound-alikes “morbidity/morbid” are more eschatological in meaning. Most probably, almost certainly, Kanghua Ren was not mentally translating from English when giving his final statement in a criminal court in Barcelona. He was accused because he offered toothpaste for food to a homeless person for the notoriety of @ReSet on YouTube. If “like” were a preposition, people resemble morbidity. People like morbidity may be an accurate translation. The @ReSet case came to a final decision in 2022.⁶⁴ Thereby, the accused was condemned not to *go to* YouTube for 5 years. Some of the Judges said the realm was a place, others the realm was more of an activity. It was a disputed decision but no judge questioned YouTube’s agency in the performances by @ReSet. If any of the judges had the slightest doubt about whether Kanghua Ren was indeed the only one to answer for @ReSet’s actions, they did not make that note anywhere during the 5-year process, through three different instances. Without YouTube, @ReSet would have never existed, and Kanghua Ren would have never captured such monetized attention and influence. Through the @ReSet case, YouTube was a business, a place, a venue for economic activity, never a product or a risk agent. Spanish §230⁶⁵ was not debated through these trials.

When UGC are harmful or illegal and the matter gets to court, UGC platforms are immune to restrict free speech because they favour free speech. Good-for-all outweighs good-for-the-few. §230 has consistently been interpreted in connection with the users’ freedom of speech after Zeran:

“Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium. The imposition of tort liability on service providers for the communications of others represented, for Congress, simply another form of intrusive government regulation of speech.”⁶⁶

Platform immunity as a cornerstone for the users’ freedom of speech is a common stallion, a standard. But no one with broadly accepted opinions,

⁶⁴ Decision 547/2022 as of June 2, 2022 by the Spanish Supreme Court, criminal section.

⁶⁵ Article 16 of the Spanish transposition of the ECD: Ley 34/2002, de 11 de julio, de servicios de la sociedad de la información y de comercio electrónico.

⁶⁶ Zeran v. America Online 129 F.3d 327 (4th Cir. 1997).

a popular discourse, needs to fight for their freedom of speech. Freedom of expression is precisely for “the few”: minorities, unpopular, isolated, or grotesque. The courts examine the merits of each case where every allegation has a name and a story. This is high definition and full colour narrative in the courts. Quite differently, legislators decide on laws with ideas in their minds only: political consent, the media, next election, and (maybe) names and stories in their past or speculations for the future. Deleuze thought the concept of human rights is abstract and empty, for he thought concrete problems deserved jurisprudential⁶⁷ solutions:

“a case being given, we shall invent its principle. It is a transformation from Law to universal Jurisprudence.”⁶⁸

According to Luhmann, human rights, are a “form of the normative expectation of normative expectations.”⁶⁹ Value collisions can only be decided ad hoc, because evidence is required in order to justify the consideration of values, which applies a fortiori if more than two values are in play.⁷⁰ To every legislator, freedom of speech, integrity, most generally “human rights” are empty because they operate on values. Black and white. And it is impossible to put one value on top without the definition, the details of the case. Additionally, human rights are a kind of devotion to some. Deleuze was not a fan of this approach: “reverence for human rights makes me want to utter statements that would be no doubt be considered odious.”⁷¹ This having in mind how others will perceive the discourse is “second order observation” and according to Luhmann, “human rights have, as a kind of programme for catching up, a market as never before.”⁷² Devoted or critical, immanent or transcendent, necessary or contingent: “human rights” is a loaded term. Believers want to extend their belief to others, opportunists want to seize the moment. One way or the other, their reference will weigh in the audience. On their part, media platforms will

⁶⁷ See note 81 (15:54).

⁶⁸ Deleuze (1993) p. 67 quoting Gaston Grua, *Jurisprudence universelle et théodicée selon Leibniz* (Paris: PUF, 1953).

⁶⁹ Luhmann (2004) p. 469.

⁷⁰ Luhmann (2008) p. 29.

⁷¹ <https://www.youtube.com/watch?v=v9TODSvDM74> (08:29)

⁷² Luhmann (2004) p. 468.

value the expressions that contribute to the relevance of their business. In *Lemmon* and *Vargas* the media platforms (Snapchat and Facebook) were taken out of §230's immunity by the court because Snapchat's speed filter and Facebook's Ad Platform were illegally risky or discriminatory by themselves, regardless of such users' uploads. In *Anderson*, TikTok was also out of §230's protection because such "For You Page" was an expression by the company regardless of such users' uploads. *Vargas*, *Lemmon* and *Anderson* were not based on freedom of speech, but on control and offering. But, when did media platforms become something other than *product*? UGC platforms are commonly referred to as *product* by the ones who control them. For example, the "*product* page" on Twitter (later X).⁷³ Or @elonmusk, who wanted to "make Twitter better than ever by enhancing the *product* with new features."⁷⁴ Or Elon Musk at Business Insider, who was conscious that "*product* 'X' would launch in 2023."⁷⁵

On October 2022, Elon Musk completed the acquisition of Twitter. In the following month @elonmusk conducted a poll on reinstating @realDonaldTrump. Out of 15.085.458 votes in total 'Yes' won by 51.8%.⁷⁶ On July 2023, Twitter's name changed to "X". The following month @realDonaldTrump tweeted for the first time since their permanent suspension. It was Donald Trump's mugshot for election interference.⁷⁷ Twitter was no longer, but from January 8, 2021, to August 25, 2023, permanent meant 959 days. A day for each cell of an adult *Caenorhabditis elegans*. Datum for data. Code for being. Days for permanence.

The meaning of time has been discussed since the dawning of thought. In ancient Greece, the origin of time *Khrónos* (Χρόνος), as later did *Aion*, represented time as a cycle. In contrast, *Krónos* (Κρόνος or Cronus), as later did Saturn, meant past, present, and future; a line for the passing of generations and parricide. Both representations, circle and line, intertwined and confused by the most reputed thinkers. After Plutarch: did Saturn mean Time (Chronos)? Did the fabled Age of Saturn participate in truth? Do these want precision? Fabled ages, superheroes, gods and, sovereigns

⁷³ <https://business.x.com/en/products>

⁷⁴ <https://x.com/elonmusk/status/1518677066325053441/>

⁷⁵ <https://www.businessinsider.com/elon-musk-new-twitter-product-x-launch-plan-pitch-deck-2022-5>

⁷⁶ <https://x.com/elonmusk/status/1594131768298315777>

⁷⁷ <https://x.com/realDonaldTrump/status/1694886846050771321>

(to a point) are unaffected by factuality. Power may be counterfactual freely. Greatest powers especially so, for they are immune. Zeus' youngest divine son Kairos (Καιρός) was to some the god of opportunity. His name meant good, precise, moments in time. Kairos is time that is "right" for the event that disrupts normalcy: the exception. The opposed to kairos is not bad kairos but the unqualified, ordinary, iterative passing of time. In modern Greek "καιρός" translates as "weather". Weather may forecast storms or revolutions. By reading kairos masterfully, Donald Trump put in place and orchestrated a formidable Dionysiac machine that made him US president. And during its time on Twitter, @realDonaldTrump was a well-tuned engine in the machine, data tornadoes sweeping Twitter. Such abstraction, the highest power of the false, recalls a pseudos in Nietzsche, a simulacrum in Baudrillard, and a Dionysiac machine in Deleuze:

"Simulation is the phantasm itself, that is, the effect of the operations of the simulacrum as machinery, Dionysiac machine. It is a matter of the false as power, Pseudos, in Nietzsche's sense when he speaks of the highest power of the false. The simulacrum, in rising to the surface, causes the Same and the Like, the model and the copy, to fall under the power of the false (phantasm)."⁷⁸

In 2024, "MAGA" became "save America." The SCOTUS heard the cases on Florida's State Bill 7072 and Texas' House Bill 20. Both initiatives, passed on 2021, sought to de-incentivize biased content moderation by UGC platforms. While hearing the cases, Justice Sotomayor pondered:

"But the one thing I know about the internet is that its variety is infinite (...) When does a burden shift to the state when it writes a law so broad that it's indeterminate?"⁷⁹

On July 1, 2024, SCOTUS sent both cases back to the lower Courts. According to Justice Kagan the platforms deserve protection from governments' intrusion in determining what to include or exclude from

⁷⁸ Deleuze (1983) p. 53.

⁷⁹ <https://www.techpolicy.press/transcripts-moody-netchoice-paxton-oral-arguments/>

their space, *like newspapers*.⁸⁰ On that same day, the SCOTUS also decided *Donald Trump v. USA*, on Donald Trump's immunity after the violent assault on the US Capitol building on January 6, 2021. Justice Roberts delivered the SCOTUS' majority opinion whereby:

“The President enjoys no immunity for his unofficial acts, and not everything the President does is official (...) But under our system of separated powers, the President (...) is entitled to at least presumptive immunity from prosecution for his official acts.”⁸¹

Later in 2024, Donald Trump run for the US presidency against Kamala Harris. In the ABC News Presidential Debate, Donald Trump said:

“In Springfield, they are eating the dogs, the people that came in; they are eating the cats, they are eating the pets of the people that live there.”⁸²

And realms online including TikTok,⁸³ Youtube, Spotify, and X exploded. After all, it is great power to exclude factuality. People eating pets in Springfield are high-energy fuel to the Dionysiac machine, same as @ReSet feeding toothpaste to the homeless, or Saturn eating children. Phantasms and fabled ages are always greater, whether Saturn's or America's. In November 2024, Donald Trump was elected the 47th president of America and charges against him in *USA v. Donald Trump* were dismissed by the US District Court for the District of Columbia.

In a digital society, systems interoperate with common languages and open standards: just like software does. Every power is limited and enhanced through media. @realDonaldTrump voiced MAGA for the benefit of Donald Trump who performed the first Twitter presidency. A public-private hybrid. Companies like Twitter are realms, not just businesses. When economy, media, and physicality collide, the general rule by the legal system is: media is immune for the benefit of the economy, and physicalities are left to deal with disappointment privately or through uncertain, lengthy, and costly

⁸⁰ 22–277 *Moody v. NetChoice, LLC* (07/01/2024).

⁸¹ 23–939 *Trump v. United States* (07/01/2024).

⁸² <https://www.youtube.com/watch?v=V5CR7HkByC4>

⁸³ <https://www.forbes.com/sites/lesliekatz/2024/09/16/trumps-viral-theyre-eating-the-pets-line-spawns-tiktok-dance-craze/>

legal processes in the hope of exceptional jurisprudential solutions. Rules mediate risk and disappointment in a way that tolerates, or may promote, harm in some cases. Disappointment. If (or when) decisions making media liable for the product they are offering, such as *Anderson*, *Lemmon*, or *Vargas* become rule, then §230 will cease serving its normative purpose. Are good Samaritans immune because they are neutral? Are they neutral because they are immune? Is algorithmic neutrality a veil to pierce? Is there a Samaritan to be seen through the veil?

“Irony and humour are the essential forms through which we apprehend the law”⁸⁴

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⁸⁴ Deleuze (1967) p 75; and (1989) p 82.

Restorative justice and the intertwining between criminal mediation and domestic violence victims' support

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DOI | 10.14195/2184-9781_6_6

ABSTRACT

Adopting the rhizomatic thought the paper examines whether restorative justice (RJ) can be a response for domestic violence victims. It presents the results of an evaluative research that show the

rhizomatic intertwining between the RJ arrangements and the support to the victims of domestic violence.

KEYWORDS

Restorative justice, victim support centres, rhizome, domestic violence

1. Introduction

Violence is a deep root of western societies and neutralizing violence, preventing violence from breaking out in the relationships has proved to be an unkept promise of law (Resta 2009). Adopting the rhizomatic thought, this paper examines whether restorative justice (RJ) can be a response for domestic violence victims.

Rhizomatic thought (Deleuze & Guattari, 1987) proposes that each entity be considered as a rhizome that features *connection*, *heterogeneity*, *multiplicity*, that comes across an *asignifying rupture*, is a map for action, a map that can never be reproduced and can always be extended and modified (*cartography* and *decalcomania*). Violence has these *approximate characteristics*, but intertwining rather than as a rhizomatic assemblage.

Violence connects the offender to the victim, not in general, but in case of a specific offender to the related victim; the offender and the victim establish the existence of violence (Resta, 2009). This connection gives rise to many more, which cut across the social condition of the participants,

the places where it can occur, and the methods. To that effect, the effort to identify dichotomies underlying violence multiplicity sees to no avail, because, as Deleuze and Guattari say, rhizomatic thought is absence of dualism and dichotomy, which reaches the form of good and evil, also in 'regimes of violence'. Deleuze and Guattari speak of regimes of violence rather than of violence, to reassert the impossibility, from a rhizomatic perspective, to divide the force from the violence and, at the same time, its pervasive, long-lasting and, therefore, not accessory feature, so much so that it is very difficult to say where violence lies. To that effect, violence is an asignifying rupture as violence generates further violence. In reproducing itself, violence is never the same, but expands giving no possibility to obtain any clear image; i.e., with no possibility for the law to define violence as a single distinct crime. In this regard, it has been said that the symbolic potential of criminal law does not work for violence or, at least, works partially because it must be followed by 'civil justice', the tangible and actual possibility for the victim to recreate an autonomous (Pitch, 1998) and dignified life.

The paper tries to detect the rhizome's approximate characteristics in RJ (para.2); in other words, it investigates whether rhizomatic RJ can be a response to domestic violence (para. 3), where domestic violence is gender-based violence involving women and, consequently, children. For this purpose, the paper is based on the results of an evaluative research work conducted by the University of Parma within the "E.R.Vi.S." (Emilia Romagna Victims Support) project. In 2021, the Italian Ministry of Justice issue a public notice calling proposals with the aim to establish victims support centres according to European Directive 2012/29/EU. The "Fondazione Emiliano-romagnola per le vittime di reato" (Emilia Romagna Foundation for victims of crime)¹, on behalf of the Emilia Romagna Region, won the call for proposals with the "E.R.Vi.S." project, which aims to launch victims support centres and to train socio-legal professionals to the purpose of working within and/or with them (para. 4).

¹ The Foundation has been operating throughout the Emilia Romagna Region since 2004 to give concrete and immediate response to the victims of serious intentional offences. It is the only institutional initiative in Italy providing support to the victims (<https://www.regione.emilia-romagna.it/fondazione-per-le-vittime-dei-reati>).

Our hypothesis is that, through victim support centres in accordance with the EU Directive, the balance between the subjectivity and rights of the victims and perpetrators of gender-based violence can be pursued and achieved not only in RJ practices but also in a symbolic plane (para. 5). To that effect, the E.R.Vi.S. project is suitable in order to analyse the polarized and interconnected nature of law and how such nature influences legal theory and practice (para. 6).

2. Restorative justice, criminal mediation, support to victims

RJ originated from a set of concepts, knowledge and factors, which partly date back to a distant past, such as those from theology and anthropology, have always investigated the meanings of justice, the value of law and on the purpose of punishment. On the other hand, they partly concern some recent evolutions in criminology, which has progressively opened up to considering the victims' needs, and the latest one in law, addressing the juridification of RJ. Over time its ancient roots have generated a justice model that enables the offender, the victim and the community to seek solutions to the effects of the conflict caused by the offence, in order to promote reparation of damage and reconciliation between the parties and the strengthening of the collective sense of safety (Colamussi & Mestitz, 2010). Amongst the many sources, worth mentioning is United Nations Handbook on Restorative Justice Programmes, which gave the requirements and characteristics of RJ programmes as far back as about twenty years ago, specifying that RJ is (a) a flexible response to crime, to the offender and to the victim, which considers each case on an individual basis; (b) a response to crime that respects the dignity and equality of all and that fosters understanding and promotes social harmony, through care for the victim, for the offender and for the community; (c) an alternative to the formal criminal justice system and to its stigmatizing effects on the offender. That Handbook indicated RJ as an approach that can be used in conjunction with the criminal system's trials and penalties; that can use problem solving techniques and search for the hidden causes of the crime; that addresses damages to and the needs of the victims; that encourages the offender to understand the causes of his or her behaviour and to take

responsibility for it in a mindful manner; that recognizes an elective role to the social community in preventing and combating crime and social disorder. In order to reach its goals, RJ must be flexible, to adapt to the circumstances, to the juridical tradition, to the principles at the core of the justice systems of the various States where it is used. The authorship of the by now conventional definition of RJ is often attributed to Howard Zehr, who outlined it as a change of lenses, as a new perspective, as a renewed approach to conflict and offence (Zehr, 1990).

The success of this definition lies in that it enables RJ to be represented as a changing perspective, as a pliant approach able to adapt to the changing circumstances in which it is used. This ability, which depicts it as flexible matter, has not prevented its juridification, which has taken place in many States, as it has also in Italy very recently (Italian Legislative Decree no. 150 of 10 October 2022, also known as ‘Cartabia reform’).

In the recent Italian act, RJ is introduced as an *organic system* having arrangements at every stage and instance of the criminal proceeding, in a supplementary and complementary manner to the traditional criminal justice system; the Italian reform has embraced several rules already long in force in the supranational law, as many other supranational sources have over time described and defined the purposes of RJ and its implementation tools. The Italian legislator has proposed a criminal justice structure that goes side by side with the traditional one, which has a mainly offender-centric and punishment-focused connotation, a response to crime oriented towards recognizing the victim’s rights and laying responsibility on the offender, thus also complying with the offender reintegration principle laid down in Article 27(3) of the Italian Constitution, which places the conflict in the community setting. In short, RJ is understood as a hybrid form of justice and as a border zone, prompting the justice system to self-reflect and evolve (Scivoletto, 2024).

In this regard, suffice it to think of RJ practices, such as criminal mediation, which is its most complete and complex tool. Indeed, criminal mediation requires a direct relationship, assisted by an expert mediator, between the offender and the victim (Peachey, 1989). Nevertheless, it has long been represented as a practice tailor-made for the offender and for having the offender take responsibility, rather than for the victim and his or her needs (Pavarini, 2006). On the other hand, RJ programmes contribute to strengthening people’s sense of safety, as clearly found in the surveys on

the satisfaction of the parties – offenders and victims – who have experienced criminal mediation and conferencing (Scivoletto, 2009; Mastropasqua, 2016).

Conversely, quite less direct is the coupling of RJ and support services to the victims, as provided for by Directive 2012/29/EU, which the most structured and complete European body of laws on the rights of crime victims. Under the Directive Member States are required to strengthen the support provided to crime victims and social protection and assistance, as well as to ensure the rights of information, emotional and psychological support, also in order to prevent any secondary victimization, going so far as to aspire to national coordination of victim support services. Considering that, the experience of support centres is but a pale reflection of the RJ model, if it means justice ensuring that the offender take responsibility and or able to facilitate the meeting between the offender and the victim. Support centres work rather on secondary victimization, in order to prevent it or to reduce its undesired effects.

From this standpoint, in the sociological, pedagogical and psychological literature, some ‘weaknesses’ of RJ have been pointed out (Schermi 2024), also considering the mediators’ professionalization, now being questioned more than ever (Tidmarch, 2022; Ceretti & Mazzucato, 2024).

Conversely, through the rhizomatic thought model, the restorative model acquires the features of an option, which connects the parties one to the other, institutions and practices (*connection*) on a *multiplicity* of planes. In other words, its concreteness and immanence make it able to adapt to the individual sensitivities and perceptions (*heterogeneity*). The nature of crimes such as gender-based violence amounts to the *asignifying rupture* of the arrangements it comprises, which increases the pitfalls related to its juridification, as well pointed out by the legal doctrine, because of its complex integration with the judicial system (Carnevale, 2023; Mazza, 2022). Nonetheless, these pitfalls make it a vehicle of juridical change and social innovation (*cartography* and *decalcomania*), as we have tried to argue in the next paragraph.

3. What if restorative justice turned out the cartography for domestic violence?

In 2009 Braidotti, Colebrook and Hanafin edited the book titled *Deleuze and Law: Forensic Futures*, where they map the impact of Deleuze’s though

on jurisprudence. The image of Deleuzian jurisprudence depicted by the essays contained in the book places the emphasis on the “material bodies of citizens”, rather than the abstract formless subject of law. As such, his jurisprudence investigates the demands of bodies and how they can transform the relationship between what counts and what is silenced by the liberal model of law (will choice). More radically, as any other entity, jurisprudence can be considered a rhizome in which individuals, with their choices and will, disappear and make room for the assemblage of the planes of demands and needs, of guilts/responsibilities and of the interests that give rise to justice.

The cornerstone of Deleuzian jurisprudence is the concept of biopower, previously proposed by Foucault and resumed by Agamben, which subverts the idea of a historical and necessary relationship between body and law. Indeed, according to this idea, the law must operate on bodies, but it can do so only by establishing a border between the body as political entity and mere life, excluded from political interest. Rather,

for both Foucault and Agamben the contemporary advent of biopolitics occurs when the polity increasingly and invasively operates on this “mere” life, and the body or organism – rather than the self – becomes the object of political management. The manner in which the body, in its “mere life” (or what Agamben refers to as ‘zoe’) becomes the focus of contemporary power has led legal theory to explore new questions of the threshold between life and death and has led social theory to question the new extensions of the law and the polity into embodied life (Braidotti et al., 2009, p. 1-2).

Braidotti and colleagues, and more recently other scholars (Peters & Taglietti 2019), nonetheless have argued that the Deleuzian interpretation of the biopower concept fits into the jurisprudence map not in a critical sense, but rather in a positive and performative sense. Biopower here indicates a differential right, i.e., inclusive of different bodies and their voices. Through the positive concept of biopower, at the same time Deleuze stimulates to look beyond the subject in an ontological sense to ask ourselves: in which moment do the corporeal relationships of a body, i.e., the various relationships between its organic and nervous potentials suffer a sufficiently important configuration to generate an incorporeal event?

Violence is one of those moments in which the body becomes mere life; as it takes place violence submits the body to such a power configuration that it becomes incorporeal, i.e., negation of being a subject (Braidotti, 1996). This assertion enables us to follow Deleuze's jurisprudence along two intertwining lines of reasoning. First, Deleuze and Guattari (1987) make no distinction between use of force and use of violence, but rather between regimes of violence: struggle, the primitive violence regime albeit ritualized; war, the regime of violence mobilization between state apparatuses; crime, the regime of violence that the State uses against those who take something they are not entitled to; police. Focusing on violence by the State against crime, here below are some considerations first on RJ as a model for response to the crime of violence. Second, the violence we speak of is gender-based violence. Therefore, we address the relationship between RJ and gender issues (Daly et al., 2006) and in this relationship we see the intersection between feminism and the Deleuzian jurisprudence.

Since the 1970s, in some States, including Italy, attempts have been made to increase control and punishment as a response to the violence suffered by women in many different forms (first and foremost as a response to domestic violence). There is substantial agreement in considering that these attempts must not be read in the criminal system modernization framework, i.e., within a design to rationalize criminal law, but rather as pieces of a wider criminalization process, in which anti-violence movements and popular initiative are the key players (Pezzini, 2020). In this regard, the term *carceral feminism* has been used; it prioritises a state response to gender-based violence and see retributive punishment as an essential component of that response (Law, 2014). Carceral feminism means "the alignment of a once emancipatory social movement with the arm of the state associated with the police, criminal courts, jails, and prisons" (Kim, 2021, p.4). From this alignment, a long road starts and arrives, in terms of legislative and judicial strategies, at assuming internationally the gender perspective of violence.

With the Council of Europe Convention no. 210 on preventing and combating violence against women and domestic violence of 2011 (Istanbul Convention), the positive law has embraced the gender perspective of violence recognizing that violence has a gender, not only in statistical terms but because, in the light of the gender-based violence, facts and modalities of relationships considered normal and immutable are reconceptualized

as conflicts and as products of power relationship (Pezzini, 2020). In other words, the expression *gender-based violence* enables, on the one hand, to conceive a new interpretation of the reality where once invisible behaviours, which society concealed “in the closed circle of domestic relationships and the victim’s shame” acquire visibility. On the other hand, it goes alongside the delegitimization of violence against women as violation of human rights, which reflects a configuration of hierarchical and patriarchal social relationships between the sexes. Precisely in consideration of the rights of the victims, the Istanbul Convention prohibits “alternative dispute resolution processes in relation to all forms of violence” against women (Art. 48).

In their paper, Daly et al. (2006) reports the existence of a “fault line in feminist engagement with restorative justice” (Idem, p. 15). On the one hand, cultural feminists criticized the over-reliance on the criminal law to control men’s violence against women to the detriment of a more caring response to crime. Cultural feminists then saw mediation as compatible with feminist values especially as “alternative to men’s forms of criminal law and justice” and able “to bring women’s experiences and ‘voices’ into the criminological and legal frame”. Feminist scholars such as Hampton (1998) have proposed a positive reading of the ‘retributive ethic’ in criminal justice, as a more sophisticated way of thinking about the nature and goals of a punitive response that should be cognitive, to provoke thought in the mind of the wrongdoer. On the other hand, Daly continues, “the association of justice and care reasoning with male/masculine and female/feminine voices, ... this gender-linked association was not accurate empirically” (Daly, 2006, p.14). Arguing the existence of an association summarizes the feminist fracture in linguistic terms, where RJ is as an ‘alternative’ to established criminal justice, but does not measure to what extent it is appropriate in case of violence against women. In this regard, Daly has identified some potential problems: victim safety, manipulation of the process by offenders, pressure on victims, the role of the ‘community’, mixed loyalties, impact on offenders, symbolic implications.

Rigorous research designs have been devised in order to assess the appropriateness of RJ in treating gender-based violence (Gang et al., 2021). In a recent research work, the alternative between retributive justice and RJ has been investigated in terms of preferences expressed by women who are survivors of gender-based violence (Decker et al., 2022). The interviewees stated that retributive approaches like incarceration offered accountability

as well as fleeting safety, but were critically limited in addressing the root causes of violence and, in some cases, were felt to exacerbate the problem. Women expressed needs and preferences centred on restorative aspects of justice, including perpetrator's acknowledgement of harm, achieving physical safety and stability, and perpetrator rehabilitation through counseling. Similar results had already been obtained in other research works that measured the attitudes to RJ of professionals in the field of violence against women (Marsh et al., 2015). Loney-Howes et al. (2024) have spoken of limits of criminal legal responses to gender-based violence and demonstrate that carceral horizons deployed to address gender-based violence cause further harm to survivors and overshadow diverse perceptions and practices of justice.

Other studies have rather assessed the effectiveness of RJ in treating gender-based violence but have obtained contradictory results. Scholars who stress the goal to restore victims to their state pre-victimisation stated that RJ produces a greater improvement on health outcomes and post-traumatic symptoms than retributive justice (Lloyd et al., 2020; Burns et al., 2023). According to other researches, there is clear evidence of a gap even in RJ so that many women felt their own vulnerability made them both a target and a less credible victim (Masson et al., 2017).

According to the most radical women scholars, the possibility of RJ in treating gender-based violence arises from the bottom up, i.e., it cannot but be based on the feminist practice of justice. Feminist project of struggling gender-based violence may be better served by RJ because it represents a room of consciousness raising, both of women rights and of the essential role institutions play in policing and enforcing women's subordination. Goodmark (2018) has identified RJ as a turning point in the development of the criminal legal regime designed to respond to women-based harms. In this regard she wrote:

by asking those who do harm to consider the impact of not just their actions, but also their conceptions of masculinity, on those they have harmed, restorative justice can encourage men to see their roles as men differently. On the societal level, engaging community members in a process that stresses alternate visions of masculinity could shift community norms. And rejecting the carceral state's response to gender-based harms could undermine its legitimacy and create momentum around shifting

time, energy and funding into more egalitarian, less patriarchal sites for justice (Goodmark, 2018, p. 379).

It is quite a demanding assertion, as it implies the construction of a performative theory of law, which includes the subjectivity of the women victims. In this regard, women must first of all be asserted as subjects without relying on dualistic oppositions or essentialist notions, for example that of human being (Braidotti, 1996). Indeed, the former repropose parts of the history of women oppression

Only a subject who historically has profited from the entitlements of subjectivity and the rights of citizenship can afford to put his “solidity” into question. Marginal subjectivities, or social forces who historically have not yet been granted the entitlements of symbolic presence- and this includes women – cannot easily relinquish boundaries and rights which they have hardly gained as yet (Braidotti, 1996, p. 310).

Relying on essentialist notions is rather at risk of not considering the intersectionality and profound asymmetry in the distribution of subjectivation lines. It is indeed here that Braidotti resumes the Deleuzian notion of rhizome, to radically justify the subjectivity of women as “other-than” and the “becoming-diverse of women”: neither at the margins nor at the centre, but rather positioned on different modes and scales of temporality, “the time of becoming ... experienced by living bodies and minds” (Lalor, 2022, p. 106). The subjectivity as becoming subverts both the identity of the rights bearer and the mechanisms by which these rights might be protected (Lalor, 2022).

Jurisprudence that is inclusive of women’s subjectivity subverts the identity of gender-based violence victims as it subverts the *leitmotifs* of female vulnerability, weakness and fragility which have often contributed to pathologize, infantilize and stigmatize gender-based violence victims (Wager, 2015). Pitch (2022) has spoken of a misunderstanding that places women who are gender-based violence victims in a continuum between the image of the perfect victim as they are vulnerable and the image of persons with agency. Subverting this misunderstanding means considering the vulnerability of violence victims as a brick stratifying the existential dimension. Paraphrasing Chouliaraki (2020), the vulnerability of gender-

based violence victims first and foremost asks to communicate its suffering to command recognition; but the vulnerability that gender-based violence impresses on women's bodies cannot be disconnected from questions of systemic inequality.

In this assemblage of needs, demands and interests, it can be placed the Directive 2012/29/EU establishing support services for the victims of all crimes. At Article 12(c)1 it recommends to Member States that RJ services should only be used if they are in the interest of the victim. From the perspective of Deleuzian jurisprudence, the interest of gender-based violence victims in RJ must mapped in social injustice terms otherwise justice becomes a set of procedures (Lenci & Carnevale 2008; see Schoultz & Smiragina, 2024).

4. The E.R.Vi.S. project and the victim support centres

As mentioned above (see para. 1) the University of Parma was the partner of E.R.Vi.S. in charge of assessing the project in terms of both results and process. To do that, we conducted 21 interviews from March to September 2023: 6 interviews to the victim support centres service workers (SW), 3 interviews to policymakers (PS) and 12 interviews to socio legal professionals (SLP). SLP were selected from among those who attended the training course organized within the project.

The main objective of E.R.Vi.S. was to establish the victim support centres in accordance with Directive 2012/29/EU given that they are still unevenly present throughout Italy; the E.R.Vi.S. project has, first and foremost, contributed to their spreading.

The Directive requires that support centres be intended for the victims of all crimes, be confidential and free of charge and operate in the victim's interest (Art. 8(c)1). The centres thus designed must operate on secondary victimization processes, providing generalist support, with special regard to the victims that have suffered severe damage, such as the victims of gender-based violence (Art. 9(c)2). Furthermore, according to the Art. 8(c)4,

Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

The E.R.Vi.S project has tried three victim support centres: a non-governmental one (Bologna) and two State ones; of these, one started operation as continuation of an already existing project of the Educational Services Department of the Municipality (Modena), the other started operation in cooperation between the Municipality and the local Town Police (Formigine). Because of the diversity of the centres tried in the E.R.Vi.S project, some fractures initially emerged in the language, practices and even in the facilities available to the individual centres, but proved neither long-lasting nor final, referring to the generalist nature of the support provided. Indeed, the centres are intended for

... the person and not only for the crime suffered, because once you enter the proceeding, the law is strictly focused on the offence and no longer considers the person's needs (SW n3).

In short, it is a sort of engagement for the citizen and the problem that he or she has experienced. In short, so that the person does not feel alone in this situation (SW n6).

The E.R.Vi.S. project has confirmed the importance of generalist support to the victims and, along with it, the cultural importance of Directive 2012/29/EU. The centres work with victims of crimes who do not have appropriate or sufficient material and/or personal resources to handle the consequences. Their work reflects the standards laid down by the Directive but features an *attentive* attitude in supporting crime victims

Giving them acceptance, listening to them, giving them information ... both psychological and rights-related assistance. We try to give the person all the useful information to report the crime, but we try also to support the victims in choosing whether to report the crime, explaining what the procedure may be, also in judicial terms (SW n5).

[the victim] perceives this event, let's say as a sort of, ... something that is not under control and needs special attention (SW n6).

On the other hand, support is *prompt*, but not urgent as in case the victim needs immediate protection (e.g., in case the victim needs to leave

her home and be placed at a safe facility). This reasserts that providing support is not merely providing immediate services, albeit in accordance with the standards laid down by Directive 2012/29/EU, but rather consists in giving assistance and being to the victim's side in the steps she must take: from paying for the material damages suffered to reporting the crime, as in the cases of which this service worker speaks

I worked with a lady who was the victim of abuse by her husband. What did the husband do? He used the wife's car, registered in her name, to ride around. When the restraining order and the separation decree were issued, the lady came to use with a long list of traffic tickets, ... for a total, if I remember correctly, of about 50 or 60 thousand €. ... So, you saved, in quotes, the wife from the presence of a violent husband [with the restraining order], but then she has to bear all [the financial damage] (SW n1).

We have an explicit protocol with the police, so when we ... if a victim of violence comes to us and wants to report the crime, we do not send her to the police station: we call the police and they come to us and then we go to a room upstairs, "The pink room" (SW n1).

The service workers interviewed described an overall significant experience: although recently opened, the centres have already established a proactive network in the community and have adapted social work tools, such as the interview, to sentinels in supporting the victims. In the next paragraph, we have tried to report the implications of this work.

5. Subjectivity and institutionalization of RJ as rhizomatic traces in the research prism

European Directive 2012/29/EU was transposed in Italy with Italian Legislative Decree no. 212 of 15 December 2015, but it was indeed Italian Law no. 69 of 19 July 2019 (*Modifiche al codice penale, al codice di procedura penale e altre disposizioni in materia di tutela delle vittime di violenza domestica e di genere*), known as the 'Red Code', that fully implemented the EU Directive.

The 'Red Code' has considerably tightened the penalties for gender-based violence and introduced new crimes (Russo, 2020); at the same time, it has established the possibility of conditional suspension of the sentence, subject to participation in specific rehabilitation or mediation programmes (Art. 6). Thus, for Italy it has become expedient (albeit not mandatory as it is a Directive) to set up centres providing victims with the support they may need to handle any secondary victimization processes, also, and not marginally, in case RJ programmes start under Art. 6 of the Red Code.

At a closer look, the 'Red Code' features as a connection between criminal justice and RJ; moreover, it has an asignifying rupture in secondary victimization, from which it opens up to civil and social justice. The expected composition effect is to create a map in order for the victim to "*get out of violence*" (SLP n12). From the symbolic point of view, this implies attention in language

Violence must always be mentioned with its name, to reconstruct, in the best possible way, the violent setting and the type of violence used, and generic terms must never be used (SLP n12).

From the practice point of view, the training actions planned within the E.R.Vi.S. project have generated the opportunity to put the support centres in touch with the social service and legal professionals who work in direct contact with the offenders and to think together how to get out from violence

I think that getting to know one another is very important. Well, getting to know one another is the foundation ... trying together to exchange views, ... those taking care of victims tend to be absolutely protective with the victims, and it's right! However, the offender is also a factor ... you cannot leave him out, because if you leave him out he is the origin of victimization, without him there would have been no victim, if that subject hadn't been there, ... so, getting to know one another, exchange views. Talking, finding a way to do things together in the network ... I think it is very important (SLP n7).

In the interviewees' opinion, the balance between the reasons of the offender and those of the victim, more than fragile, or worse undesirable,

as we would have expected, conversely seemed as a possibility to be kept open precisely to the extent in which justice works as an assemblage. In the research prism, RJ is a different form of justice due to the use of tools alternative to those of criminal justice and to the extent which, not only the offender, but also the victim and the community become *other than* (Braidotti, 2009). The victim support centres established by Directive 2012/29/EU give a contribution to not conceive duality, but especially to consider identity as a circumstantial entity, at the same time becoming and incarnated, processual and situated.

The interviewees traced at least three levels of difference. First the offender and the victim are other than those represented in retributive justice; i.e., they are not merely parties to a trial. This level of difference is strongly affected by Directive 2012/29/EU, whose language refers to the *author*, rather than to the defendant or to the person under investigation, while, at the same time, it gives the victim the possibility to have a voice and a body. Where ordinary trials cannot ensure “room and answers”, Directive 2012/29/EU gives the victim “room to speak” based on the possibility to recover an acceptable relationship with the other (Bouchard, 2023). To that effect, in the interpretation given by this interviewee, the symbolic importance of Directive 2012/29/EU lies in that it contributes to a civil justice that gives “equal dignity” back to the parties

in the Code, there is the victim and little else. And, how to say, having taken this point of view inside the trial is a commendable thing, which was not there before. ... it's a matter of civilization, which, personally, I am in favour of (SLP n10).

The second level of difference is the one internal to both victims and offenders. This level of difference implies a change in the representation of victims and offenders as subjects entering the criminal system because they ‘lack’. Victims and offenders are often described as poorly educated individuals, living in financial, social and cultural marginalization. Conversely, vulnerability is represented by the interviewees as a turning point: from being an exclusive identity feature, vulnerability becomes the very foundations of social living and, hence, of justice

I'm going to use a rhetorical sentence, but we are all victims, that is to say the possibility, the point of vulnerability where we can find ourselves involved in a crime situation ... really all of us. ... it would be very interesting to extend precisely this culture of support ... [because] there is a vulnerability point that we all share (SW n3).

I mean all that part on vulnerability about who the victims are, it [the Directive 2012/29/EU] identify the victim and also find room for all that part of victim protection. ... it gives the possibility to the Member States to introduce in their legislation precisely this attention (SLP n7).

The interview passages quoted refer to yet another difference, internal to each victim and each offender, between the consciousness level and unconscious identifications. This level refers to the possibility that, through communication of one's life experience, also painful, both parties become not only public but also political subjects. As pointed out by Chouliaraki (2024), in his sociology of critique, Boltanski had already argued that hitherto-undefined publics can test those who suffer to determine what is just. It is a position to some extent shared by the interviewees, who can see the difficult political legitimization of suffering, versus a widespread instrumentalization of the language of pain

The victims? Here starts a very general discourse, a very complex one if you ask me, concerning the victimization process, a process during which images of victims, stereotypes are constructed, (PM n3).

Anything done by the court that is not close to what the public opinion expects, for example, although the defendant is found guilty, the famous extenuating circumstances are granted, ... controversy starts! ... but, what does it mean? It means that ... You find the defendant guilty, but you must understand in what background the offence took place ... sentencing and be fair in your judgement. I think that limitless increase in penalties, the more femicides, the harsher the penalties, ... but imprisonment is not going to eliminate these twisted things. ... (SLP n11).

Here enters the third subject, without which there would be no justice, especially in the form of RJ, namely the community. The community is

not the State meant as ‘singleness’ which holds the judicial power and control tools, but rather regards participation between governmental bodies, criminal justice system, citizens’ associations, local organizations as a collaborative control (Giddens 1999) in preventing and combating crime and social disorder.

The interviewees reach here a very significant crux, such as that of strategic use of violence (Tomelleri, 2023). Where violence and gender-based violence are often used to fuel fright and sorrow as a policy, along with scaremongering, victimization expresses the need for “a slow temporality of judgement” (Chouliaraki, 2024, p. 131) and for change in the justice narrative: from finding out what happened and reconstructing the events, to justifying the life experience, the emotions and the suffering that followed. In this meaning, Chouliaraki speaks of intersubjective justice, which requires you to devote your focus and respect to the person you’re talking to. In this regard, the victim support centres are not only a place of attention, but also a stronghold of justice, as confirmed by the interviewee quoted below

In that moment, it is about two people who are one in front of the other and what we can do is hearing them, hearing about their suffering and say “I hear you, let me see what I can do. But, in any case, I’m here, I am going to help you and stand by you on your path”. This is what we do (SW n2).

The victims of gender-based violence may have suffered a lot of damages, not only material ones, and, consequently, they may have a constellation of very concrete needs and demands, which must be met. But, more than anything else, the interviewees reasserted, they must not suffer institutional and structural damage; that is to say, they have the right to be listened to and believed:

I think that the true right is the right to be listened to and believed; which doesn’t mean that I believe that things went as the victim says, because this is up to ... to decide, but I believe that her situation is as she says, ... I have to believe that in that moment she needs something (SLP n1).

Uh, we are about to step on a very delicate ground, ... I think that usually (children) are not believed, even though the right to be listened to is laid down and set in international conventions, ratified ... (SLP n3)

If thought as an assemblage, justice has in RJ as an *option* in all crimes, including gender-based violence; but RJ is not a possibility for all offenders and for all gender-based violence victims

... Then now there is also a whole structure regarding the defendant, there is the obligation to attend programmes for abusive men. I think that, at the end of the day, this quite good, because, as far as I'm told, people often understand that using violence is not a solution. In accordance with the Red Code, in order for the penalty to be suspended, they must attend a programme, but if the case is prepared for trial well, if there are witnesses, if there are medical records, the offender will be found guilty and sentenced (SLP n11).

It's complicated, difficult, it's not for all, not for all at the same time, because the possibility of access certain restorative justice programme for the victim is to be assessed, ... because it's not for all offenders just as it's not for all victims (SLP n7).

The distinction made in these interview quotes reveals how much domestic violence is a *tangle* that is difficult to unravel, even in order to assemble collective narratives of justice “that avoid individualistic explanations of social suffering” (Chouliaraki, 2024, p.133), in which RJ is to be placed, and experiences of victim support centres in collective responsibility practices, which “demand concerted actions ... using them to highlight not everyone's pain in general but the pain of those who suffer most and turn that suffering into call for solidarity” (Idem, 139; see Braidotti & Dolphijn, 2005).

6. Conclusion

In our work, we asked ourselves whether RJ can be a way to address domestic violence. To do so, we adopted the rhizomatic thought approach, applying it to the data from the evaluative research work carried out on the E.R.Vi.S. project. The obtained results come together on a multiplicity of planes, each one of which is, in its turn, branched, which give back the image of a rhizome between RJ and support to the victims. Therefore, it is

a rhizome that assembles different semiotic systems, each one of which has an identity and characteristics that are, in their turn, rhizomatic.

The E.R.Vi.S. project is well suited to detect the approximate characteristics of this assemblage. The service workers and legal professionals interviewed appreciated the training course within the E.R.Vi.S. project as an opportunity to learn about the very existence of the victim support centres and to start to exchange views and experiences with them, in order they have a legitimate say. This *connection* rests on the idea that the two parties, offender and victim, can meet within a justice system featuring *heterogeneity* as it is open to individual sensitivities and perceptions and involves those that go through it. It is a meeting that has already been made possible by the *multiplicity* of RJ programmes. RJ finds room on the topics of conflict, resentment, revenge and reconciliation, and, on the operation of the various segments of formal justice (juvenile, adult, cognitive, executive, justice of the peace's jurisdiction), as well as on individual targets (minors, women, prison inmates, repeat offenders or offenders with a clean record). Its application can work on several social context (peer groups, neighbourhood relations, corporate and school organizations) and on several types of conflict, not only on conflicts resulting from the offences, taking into account the stratification of the components (gender and culture, but not only these) that goes along with them. Ultimately, RJ continually fluctuates between the general and the specific, between the macro and the micro, between theory and practice, and, most of all, between the victim and the offender. They are the becoming-world, the line of flight, the *asignifying rupture* from which the rhizome between RJ and support to victims evolves to community. Victim and offender within public policies of law increasing constructed in the assemblage of justice models (*cartography*), for example the 'Red Code', which justify their nature of nomadic subjects (*decalcomania*).

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Pandemic Denial and the Great Reset Conspiracy Theory: The Power of Semiotic Inter-codability

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DOI | 10.14195/2184-9781_6_7

ABSTRACT

A rarely-discussed aspect of the covid-19 pandemic was how discourses based on the Great Reset Conspiracy Theory emerged to portray the pandemic as being manufactured by a global elite of liberal scientists, politicians, and intellectuals, who used the pandemic to attempt to furtively dismantle capitalism and reform the world order in accordance with radical liberal policies and views. These discourses became part of a major disinformation ecosystem gaining power via their

rhizomatic structure, which can be framed as a semiotic strategy based on “inter-codability” based on the coordination of interacting codes (rhetorical, visual, symbolic, narrative). This essay applies the inter-codability concept to a deconstruction of the Great Reset Conspiracy Theory, given that it could not have become so powerful without a semiotic network interlinked codes behind it.

KEYWORDS

covid-19, inter-codability, Great Reset Conspiracy Theory, meta-code, infodemic, QAnon, denial discourses

Introduction

In his bestselling 2004 novel, *State of Fear*, Michael Crichton painted a highly misleading and distorted portrait of the science of climate change, implying that a cadre of scientists, left-leaning politicians, and elitist liberal intellectuals had manufactured the global warming crisis in order to create a worldwide panic for self-serving reasons—namely, to promote a self-serving science agenda to get access to funding money and to control people’s minds by creating a “state of fear.”¹ The plot revolves around a group of eco-terrorists who are set on committing mass murder in order

¹ Crichton 2004.

to expose the dangers of global warming to the human species. Despite being a work of fiction, Crichton included graphs, footnotes, appendices, and even a bibliography, so as to impart an aura of scientific verisimilitude to the narrative. Although climate change denial started before the novel, there is little doubt that Crichton helped propel the politics of denialism broadly, spilling over into other areas, including the adoption and spread of conspiracy theories related to the covid-19 pandemic years later, which bear the same false narrative imprint to them of Crichton's novel.

The novel exemplifies how denial discourses work semiotically—it twists the meanings of scientific notions, using terms such as “hoax” and “cabal” to create an aura of sinister groups operating behind the scenes. It also reverses the meanings of the words and symbols that climate scientists and environmentalists use to convey their warning messages, suggesting that the science behind global warming is fallacious. Crichton also suggested that global warming hysteria became a media preoccupation because the reins of mass communications were in the hands of the members of the cabal. The gist of the book's intent is summarized perceptively by Rick Piltz as follows:²

Every aspect of the novel seems designed to make up a sustained, scurrilous misrepresentation of the climate science community and the environmental movement. His environmentalists are either eco-terrorists planning to cause a murderous disaster to further their sinister, authoritarian political aims, or they are ignorant fools and hypocrites. The leading climate scientists don't know what they're talking about, misrepresent their data, and trade their intellectual integrity for continued funding by bureaucrats with whom they are in collusion to mislead the world into believing that anthropogenic global warming and its impacts are real.

The novel came forth at a time when the social media universe had become a reality—a universe that quickly absorbed the conspiratorial mindset that it enfolded. By the time of the covid-19 pandemic, this took concrete form in the discourses based on the Great Reset Conspiracy Theory, which saw the pandemic as being manufactured by the same global elite

² Piltz 2015.

that was described by Crichton—a group of liberal scientists, politicians, intellectuals, and mainstream media pundits who were using the pandemic to surreptitiously dismantle capitalism and to enforce radical changes to the world order in accordance with radical liberal policies and views. The term “Great Reset” was adopted by the conspiracists from the name given to an initiative launched by the World Economic Forum in June of 2020, calling for fairer outcomes to people across the world by rethinking global investment and government expenditure in light of the catastrophic economic effects of the pandemic. The Forum was portrayed by many alt-right pundits on their social media platforms as a smokescreen hiding the real objective of the elites to take over the world, by destroying capitalism and enacting a “one world government” under the cover the covid-19 crisis, using the pandemic as an opportunity to ensconce policies such as forced vaccinations, identity cards, and the renunciation of privacy.

The conspiracy theory quickly became part of a major disinformation ecosystem, gaining power discursively via its rhizomatic structure, as Deleuze and Guattari called the power of interconnected meaning networks, which impel us to glean from them whatever we want to see in them.³ In a similar fashion, the present author used the term “inter-codability” to refine the rhizome notion by concretizing how such a network is constituted, with interacting codes (rhetorical, visual, symbolic, narrative).⁴ The purpose of this essay is to apply the inter-codability concept to a decodification of the Great Reset Conspiracy Theory, given that it could not have become so powerful without such a network of interlinked codes behind it. In a relevant study, Christensen and Au, conducted a qualitative analysis of social media content related to the hashtag #StopTheGreatReset, finding that Great Reset conspiracy narratives not only relied on traditional conspiratorial tropes, but also reflected a spreading anti-institutional discourse based in an ever-spreading antidemocratic politics.⁵

The Great Reset Conspiracy Theory encompassed terms similar to those used by Crichton, which had rhetorical force, including “takeover,” “world order,” “elitist cabal,” “deep state,” and many others. These were signifiers in the verbal code within the network. These were reinforced semiotically

³ Deleuze and Guattari 1987.

⁴ Danesi 2023.

⁵ Christensen and Au 2023: 2348–2366.

by visual-iconic codes, which included images of totalitarian social control (such as pictures of dictators of the past), and by the narrative structure of the conspiracy itself, all of which constituted other codes within the network. At the core of these codes was a meta-code—namely, the plot of world takeover. This was the overarching code from which all the others derived, forming an intricate meaning network that allowed conspiracists to make their messages coherent. It was the activation of this inter-codal system that imbued the conspiracy theory with such emotional force, providing a conceptual filter for (mis)interpreting measures such as lockdowns, mask-wearing, and vaccines, which could be mapped to the purported cabal's overall strategy of stripping away freedoms, increasing mass surveillance practices, and forcing vaccines on people, as a means of mind control.

Inter-codability

Cabalistic discourses are cognitively destructive because they deeply alter people's understanding of facts and reality, to the point where the believers will see nothing but what they are told to see by the congeners of the discourses. For any conspiracy theory to gain a foothold broadly in groupthink, it must have roots in deeply-embedded conceptual mechanisms that are carried forth to the present via language and other semiotic codes, lying in wait (unconsciously) for someone or something to revive or activate them. This is arguably what happened with the Great Reset conspiratorial discourse—it reignited the age-old cabal code that there is a small group of people working behind the social scenes who maintain power by controlling people's minds through persuasive techniques. This activation does not take place in cognitive isolation, but rather via the tendency of semiotic codes to coalesce into larger codes, or meta-codes, a concept that extends the notion of rhizomatic discourse structure in a specific way. So, for instance, the purported conspiracy that climate scientists are collaborating with radical liberal entrepreneurs and politicians, as portrayed by Crichton, and the Great Reset conspiratorial theme in pandemic denialism, converge around the same cabal-based meta-code. Even the players are essentially the same ones.

Never before has the semiotic approach to the deconstruction of false discourses been as critical as it is today, given the omnipresence of

conspiratorial groups and persistent false discourses throughout cyberspace. The interrelation between pandemics, social upheavals, cultural changes, and even innovations in the arts, writing, and other creative activities has been a part of human experience since the dawn of history. This does not mean that creativity and change are not sparked in other ways and inspired by other severe predicaments, from war to natural disasters or simply by an inherent impulse for innovation. Whatever the source or spark, the end result is the creation of semiotic artifacts that allow for reflection on what is going on, but which leave their traces into the cultural substratum permanently. The classic case-in-point is the invention of prose fiction, as exemplified in the *Decameron*, written by Giovanni Boccaccio in the 1300s, as a way to cope with the ravages of the bubonic plague through the telling of stories about everyday life, an invention that changed the world permanently, with the subsequent rise and spread of fiction as a major form of literature.⁶ At the same time, the negative side of creativity also emerged, with conspiracy theories aplenty, which blamed the Jews, witches, lack of religiosity, and other culprits emerging at the same time. These formed the conceptual substratum for subsequent conspiracy theories to emerge, many based on the meta-code of a Jewish cabal operating secretly to maintain hidden power over the world.

The term *code* is used in reference to the set of shared meanings and interpretations among users of a sign system (language, art, gesture, music, etc.). Without a code or set of codes, signs in themselves would have no meaning. To cite Roman Jakobson, a code allows users to consistently connect required or desired meanings to the signifiers used to deliver them (words, images, symbols, and so on).⁷ In an inter-codability system of analysis, the meanings are inherent in the individual codes constituting the overall network and the signifiers are the sign forms that constitute the codes. These are all derived from, or connected to, a core meta-code without which the individual codes would break down and fall from the network. The met-code keeps the network stable and impervious to change across time, revealing the process of time-binding, as Alfred Korzybski called it, which he described as “the capacity of an individual or a generation to begin where the former left off,” which, for the present purposes,

⁶ Boccaccio 1353.

⁷ Jakobson 1966: 34-45.

can also be seen to be the unconscious mechanism that activates conspiratorial meta-codes.⁸

As Anna Aragno has insightfully pointed out, the mind itself may be construed as an amalgam of coded information, “based on progressive stages in the development of symbolization, a cerebral faculty unique to our species, distinguishing us from all other animals, without which we could neither speak nor conceive of “mind at all.”⁹ In a similar vein, Georgij Somov sees the inter-linkages of codes in the expression of a specific thematic discourse, as the core element of how we make and extract meaning holistically:¹⁰

Codes can be viewed as mechanisms that enable relations of signs and their components, i.e., semiosis is actualized. The combinations of these relations produce new relations as new codes are building over other codes. Structures appear in the mechanisms of codes...Hence, codes can be described as transformations of structures from some material systems into others. which reflects the way typical semiotic formations emerge in mind based on the interrelations of various codes.

In the Deleuze-Guattari model, the assemblage of nodes in a network involves connections between any of its constituent elements (signifiers), regardless of ordering, structure, or entry point. In inter-codability theory, on the other hand, there is an entry point—the prior existence of a meta-code, such as the cabal one, which has been imprinted in the various codes that make up the particular network—rhetorical, iconographic, narrative, and symbolic, which carry forth the same themes and concepts that the meta-code established historically. Without this, the network would crumble under its own weight so to speak. Deleuze and Guattari break down structures into floating signifiers, to use Claude Lévi-Strauss’s apt term, or forms “representing an undetermined quantity of signification, in itself void of meaning and thus apt to receive any meaning.”¹¹ Contrariwise, inter-codability suggests that the network itself is so organized that only a bounded range of meanings can emerge from it, through its signifiers.

⁸ Korzybski 1933.

⁹ Aragno 2019, 21.

¹⁰ Somov 2016: 557-599.

¹¹ Lévi-Strauss 1950: 64.

Nonetheless, there is a point of similarity between these two models as can be seen in the fact that a rhizome node may be broken at a given spot, but will start up again on one of its old lines, which is somewhat analogous to the idea of regeneration or reactivation of a network on the basis of a meta-code.

The Infodemic Crisis

At the start of the Internet-social-media era, at the turn of the twenty-first century, the SARS epidemic came forth in 2003 to turn the digital system into a tool for conspiracists. It allowed for an “infodemic” to crystallize alongside the epidemic itself—a term coined in that year by David Rothkopf in reference to the rapid and far-reaching spread of both accurate and inaccurate information about the epidemic through cyberspace.¹² The term was a metaphor depicting how disinformation can spread like a virus from person to person and affect people destructively like a physical disease. As Rothkopf remarked, the infodemic transformed the actual epidemic from a regional health crisis into a “debacle” that had economic and social repercussions. He defined it as a “complex phenomenon caused by the interaction of mainstream media, specialist media and internet sites, and ‘informal’ media, which is to say wireless phones, text messaging, pagers, faxes, and e-mail, all transmitting some combination of fact, rumor, interpretation, and propaganda.”¹³ In the misinformation ecosystem that had emerged, conspiratorial ideas such as those expressed in fiction by Crichton a year later, began to spread. The most prominent one was that the virus was spread on purpose by an antagonistic foreign government. The stage was set for the Great Reset Theory almost two decades later.

From the start of the global spread of the coronavirus around the latter part of 2019, the online conspiratorial culture started perpetrating misinformation, mirroring the pattern of spread and mutation of the coronavirus itself. Tanya Lewis summarizes the situation perceptively as follows:¹⁴

¹² Rothkopf 2003: B.01.

¹³ Rothkopf 2003: B.01.

¹⁴ Lewis 2020.

This infodemic is just as harmful as covid-19 itself, leading people to downplay the severity of the disease and ignore public health advice in favor of unproved treatments or “cures.” A recent survey by the John S. and James L. Knight Foundation and Gallup found that four in five Americans say the online spread of misinformation is the biggest problem facing the media. Even with widely available evidence to the contrary, beliefs are hard to change.

The main type of misinformation that surfaced was a set of conspiracy theories that all revolved around the same meta-code utilized by Crichton in his novel against climate change science—namely that a sinister and powerful group was working behind the scenes, consisting of the usual suspects (liberal politicians, scientists, academics, and so on). The meta-code was expressed vicariously through a whole set of inner conspiratorial codes within the network such as blaming the pandemic on 5G technology, portraying it as a biowarfare plot, describing it as a big pharma ploy, and others—all of which can be seen to derive from the same meta-code of the cabal. The Great Reset Conspiracy Theory was the most deleterious of all the inner codes. The culprit behind the pandemic, in opposition to the scientific consensus among doctors and medical researchers that the virus had a natural source, was the same one that Crichton had so cleverly (mis)identified. In this case, the cabal was portrayed as aiming to “reset” the world according to its own ideology. Because conspiracy theories resist falsification, reinforced by factors such as circular reasoning and confirmation bias, one of the negative legacies of the covid-19 pandemic has been to embed conspiratorial discourse into the unconscious as an instrument of understanding, engendering a widespread distrust of authority and the spread of political cynicism. Once limited to fringe groups or individuals, this type of discourse has become commonplace in social media.

In a sense, the ecosystem that perpetrated and perpetuated the conspiracy theory might reflect how mythological thinking continues to influence our perception of unexplained events even in an age of science and secularism. As Roland Barthes cogently argued in his book *Mythologies*, such deeply-embedded thinking is an unconscious factor, not only in the creation of contemporary narratives in the field of entertainment, but also in how we see the mythological past as a frame for understanding the

present.¹⁵ It is one small step to extend Barthes' argument to deconstruct the rise of false beliefs based on false narratives and conspiratorial discourses in terms of such thinking. The major function of myth, Barthes claimed, was to "naturalize" a mode of thought or belief. The false myths that are imprinted in conspiratorial theories provide justification of biases, prejudices, and fears, because they literally "makes sense" on their own, being so deeply ensconced in the unconscious part of the mind.

In his 1722 novel, *A Journal of the Plague Year*, designed as an eyewitness account of the devastation caused by the bubonic plague in the city of London, Daniel Defoe, like Crichton after him, included statistical tables of casualty figures, oral witness testimonials, mortality documents, mayoral proclamations about the plague, and excerpts from the medical literature of the era to make his work even more realistic, drawing attention to the dangers of crowded living conditions and how plagues spread under such conditions, contrary to Crichton's objective.¹⁶ The style of Defoe's account achieves the same kind of verisimilitude of an actual diaristic journal, providing first-hand-type comments on the neighborhoods in which the chaotic events took place. The book sparked intense debates about public health procedures, raising awareness of the need to solve the problems that plagues bring with them, physical, social, and emotional. Quite striking is Defoe's description of the fringe theories as to the origins and spread of the disease that were being bandied about in London, putting obstacles in the way of the physicians to enact effective therapeutic measures. These were conspiracy theories that fed into the mass panic that common people experienced, as they tried to come to grips with the disease. Defoe's book also alluded, significantly, to the spread of a narrative that assigned blame to the origins of the plague to another nation, France, claiming that the plague reached England via the French port at Marseilles. Defoe had identified the same meta-code that Crichton used centuries later and that resurfaced during covid-19, albeit in a different form—namely that someone or something was the culprit for a calamity.

Never before in human history have false narratives become so widespread as they have because of the social media ecosystem. It is the massiveness

¹⁵ Barthes 1957.

¹⁶ Defoe 1722.

of the diffusion itself that actually adds to the perceived plausibility of the misinformation, given that, as any widely accepted belief, it is difficult emotionally to go against the grain. Moreover, the communicative situation itself provides a strange form of pleasure, as people on social media not only accepted the “truth” of a conspiracy theory at face value, but added to it subjectively by commenting on the theory through personal posts, thus allowing it to develop and mutate throughout cyberspace—like a physical virus. The resulting intertextual system (one version based on another and on another and so on) made the false ideas even more believable in themselves—a mindset that can be encapsulated colloquially as follows: “If so many believe it, then it must be true, especially since I myself can add something to the substance of the information.” It is at such points that a conspiracy theory becomes impervious to falsification, as believers tend to interpret any contrary evidence as actually confirming it, thus actually reinforcing it (confirmation bias), since the contrary evidence is seen a ploy if the cabalists. This whole misinformation discourse system is bolstered by social-media algorithms—when someone clicks on a conspiracy-oriented post, the algorithm offers up similar posts, sites, and platforms, which contain more false information, perpetuating the cycle of falsity that is becoming larger and larger.

Meta-code-based conspiracy theories spread primarily via hashtags, chat groups, and simple Google searches. In this virtual environment, believers develop their own language, sometimes called a “plandemic,” which imparts a sense of belonging and feeling united against a perceived common enemy. The term “plandemic” is traced to a 2020 conspiracy theory video, *Plandemic: The Hidden Agenda Behind Covid-19 and Plandemic: Indoctrination*, which promoted misinformation about the covid-19 pandemic as something “planned” behind the scenes—hence the result of a “plandemic.” The video went viral and became so embedded in the minds of many, given the persuasiveness of its pseudo-scientific arguments, that the general concept that there is a worldwide conspiracy seeking to control humanity through fear and to make money continues on seemingly without constraints.

The question of why anyone would believe such preposterous claims remains somewhat obscure, since fear and anxiety have been managed in an infinitude of ways in the past, outside of the adoption of conspiracism. In this area, the ideas of political scientist Michael Barkun seem relevant.

Barkun sees the appeal of conspiracism as motivated by three main reasons.¹⁷ First, conspiracy theories emerge to explain what institutional-scientific analysis cannot, which allow people to make sense out of something that is otherwise confusing. Second, they have a simple appeal, dividing the world between the forces of light and the forces of darkness. And third, they are presented as special, secret knowledge unknown or unappreciated by others, a style that clearly imitates the fictional one used by Crichton. The latter reason gives believers a sense of powerful knowledge that allows them to feel that they have uncovered a mystery. As Barkun puts it: “For conspiracy theorists, the masses are a brainwashed herd, while the conspiracy theorists in the know can congratulate themselves on penetrating the plotters’ deceptions.”¹⁸

The sense that by connecting the dots (clues) present in specific conspiratorial discourses, social media users unravel the mystery has been described as part of apophenic reasoning, a term introduced by psychiatrist Klaus Conrad in 1958 in reference to the “unmotivated seeing of connections” that are accompanied by “a specific feeling of abnormal meaningfulness.”¹⁹ Conrad applied the term to describe the early stages of delusional thought emanating from over-interpretations of sensory information and perceptions. The same notion has come forth to describe the propensity of unreasonably seeking patterns in random information, as can be seen in conspiracy theories, whereby coincidences are woven together into an apparent secret plot. The notion of apophenia provides direct psychological evidence that semiotic networks, constructed for deceptive purposes, produce belief in the meta-code they enfold, making us prone to manipulation by those who harness this very tendency to create unified patterns of meaning, from which there is no cognitive escape other than to reject the whole semiotic network system entirely. Each code in a network in isolation would not produce a false belief by itself; it is via its apophenic connectivity to other codes in a network that makes it resonate with believability.

¹⁷ Barkun 2003.

¹⁸ Barkun 2003: 3.

¹⁹ Conrad 1958.

The Great Reset Conspiracy Theory

The cabal meta-code used in denial discourses takes on various rhetorical-symbolic-figurative forms. In their most common form, the discourses warn that global elites manufactured the covid-19 pandemic to advance their world order aspirations. To reiterate, the denialism emerged as a semiotic distortion of the “Great Reset” initiative of the World Economic Forum, which introduced the term at its 2020 international conference to represent the need to reduce global inequality and advance environmental initiatives in the wake of the devastation of climate change and the coronavirus. The denialists saw this as “proof” that global elites were using the coronavirus and climate change science as a means to reorganize global societies and economies in order to control world order. In an October 2020 open letter addressed to President Trump that became a cornerstone for the conspiracy, the radical right-wing Catholic Archbishop Carlo Maria Viganò wrote the following:²⁰

A global plan called the Great Reset is underway. Its architect is a global élite that wants to subdue all of humanity, imposing coercive measures with which to drastically limit individual freedoms and those of entire populations. In several nations this plan has already been approved and financed; in others it is still in an early stage. Behind the world leaders who are the accomplices and executors of this infernal project, there are unscrupulous characters who finance the World Economic Forum and Event 201, promoting their agenda.

The letter gave impetus to conspiracy groups to perpetrate the false claim that the coronavirus was a pretense devised to enforce lockdown measures, to destroy businesses and weaken the economy, so as to strip away freedoms, increase mass surveillance practices in totalitarian-regime fashion, and force vaccines on people. Great Reset conspiracists cast Trump as the only leader able to combat and defeat the cabal behind it. Spurred on by Viganò’s letter, pandemic denialists resisted public health measures, perceiving them as part of the Great Reset plot, delaying the resolution of

²⁰ Viganò 2022.

the pandemic via the usual public health measures of the past, including prophylaxis (mask wearing, disinfection, hand washing) and vaccination.

In their 2021 book, *I Know Who Caused Covid-19: Pandemics and Xenophobia*, Zhou Xun and Sander Gilman insightfully remarked that “in times of stress such as during pandemics, ancient prejudices and primeval fear, always beneath the surface, can be brought to life to haunt us”.²¹ In medieval Europe the scapegoats for the bubonic plague were the Jews, as mentioned, who were attacked by mobs as a result; in seventeenth-century London it was the French; in the early twentieth century, as cholera spread across Europe, the scapegoats were the lower classes, who were seen as unhygienic.

As a meta-code, the Great Reset Conspiracy Theory overlapped with another similarly-derived meta-code, called the Great Replacement Theory—in effect, the two constitute one overarching meta-code. The latter claims, essentially, that Western and majority White countries are under threat from immigration and declining birth rates. This theory gained momentum with the 2011 publication of French writer Renaud Camus’ book, *Le gran remplacement*, in which he expressed disdain over the influx of immigrants into France whom, he claimed, with the support of radical leftists (the French deep state), were destroying the country’s cultural and ethnic identity and replacing it systematically with their own identities and cultures, leading to the disappearance of traditional European culture.²² This interlinkage of two false meta-codes reveals the operation of apophenic thinking perfectly, since it involved connecting two embedded false myths thematically no matter how false or random they were. They were installed in the time-binding process. The simplicity and use of slogans by Camus constitute rhizomatic nodes in the conspiratorial discourse, including “white genocide” and the term “great replacement” itself, which gave the conspiracy theory a concrete lexical form, allowing it to spread discursively through cyberspace. Camus claimed explicitly that with the complicity of replacist elites, the ethnic White European populations at large were being demographically and culturally replaced by non-white peoples through policies such as mass immigration, the brain-washing advice of zero birthrates, and others. While similar coded themes have characterized various far-right theories

²¹ Xun and Gilman 2021.

²² Camus 2011.

in the past, including Nazism and Fascism, the term popularized by Camus became a rallying cry along with the Great Reset Conspiracy Theory during the pandemic, pinpointing the virus as yet another tool of white genocide, as Camus called it.

The two meta-codes are almost impossible to eradicate, because, as Sauter has remarked, social media and the Internet are an “apophenic machine,” whereby “one thing leads to another, always another link leading you deeper into nothing and no place, floating through self-dividing and transmogrifying sites until you are awash in the sheer evidence that the internet exists.”²³ This machine is a conspiracy-making one, impelling believers to think that they came up with the “conspiracy insight” themselves, after connecting the semiotic dots (rhetorical, symbolic, imagistic) apophenically. As a result, any contrary evidence is perceived to actually confirm their belief, since it is assumed that the cabal is behind the “false evidence.” This whole false belief syndrome is bolstered by social-media algorithms—when someone clicks on a conspiracy-oriented post, the algorithm offers up similar posts, sites, and platforms, which contain more false information, perpetuating the cycle of falsity that becomes larger and larger.

Counteracting a conspiracy theory such as the Great Reset one through facts and logic is rarely successful because of the sheer massiveness of its spread through cyberspace. Conspiratorial memes claiming that the World Economic Council is controlled by an elitist cabal which is using the Great Reset to set up a one world government have spread to all kinds discourses across cyberspace, making the conspiracy evermore difficult to eradicate, especially since it links the historical Jewish cabal code to the one pertaining to climate scientists. In medieval Europe, as mentioned, the scapegoats for the bubonic plague were Jewish citizens, who were attacked by mobs, even though many of them were physicians who actually helped poor people through their suffering and, in some cases, even become cured. In the early twentieth century, as cholera spread across Europe, the scapegoats were the lower classes, who were seen as unhygienic. Riots followed, as even the police and medical practitioners were assaulted and even killed. Medical practitioners have always attempted to dissuade people from adopting such self-destructive views, using medical notions, but usually to no avail, until

²³ Sauter 2017.

the pandemic starts to subside, thanks to their efforts. Significantly, it was writers who came forth to make compelling arguments for dispelling the conspiratorial ideas. As mentioned, Boccaccio even devised a whole new genre, fiction, to be able to get people to understand the seriousness of the plague in medical, not superstitious, terms. As Girard has aptly remarked in reference to the Shakespearean tragedy, *Romeo and Juliet*, powerful writing is often “a mimetic reenactment of a scapegoat process,” based on a kind of sinister need for temporary catharsis from panic, which Shakespeare actually ridicules:²⁴

In his tragedies, Shakespeare reproduces the cathartic mechanism of all tragedy; but he underlines it so forcefully that he lays it bare, so to speak, forcing us to ask questions that run counter to the cathartic effect, questions that would tear the entire dramatic structure asunder if they were seriously asked. In his comedies, Shakespeare openly derides the sacrificial pattern. In the Pyramus and Thisbe episode of *A Midsummer Night's Dream*, the play that comes immediately after *Romeo and Juliet*, he parodies the cathartic system of this first play. He comes closer to a full revelation of the sacrificial values hidden behind the plague and other mythical or tragic metaphors than our contemporaries, including those like Artaud, whose frontal attacks against sacrificial values ultimately regress into the crudest forms of sacrifice. Contrary to what we believe, we may not be in a position to criticize Shakespeare. He may be the one who criticizes us. Rather than trying to judge him from above, from a necessarily superior “modern” viewpoint, we should try to recover some major intuitions of his that obviously escape us. We must have lost them somehow and somewhere, unless, of course, they have yet to be grasped.

The Great Reset Conspiracy Theory brings out the power of conspiratorial thinking to shape perception and belief, warping minds to accept falsity—a warping process that could not occur in semiotic isolation. A phrase such as “great reset” would not, on its own, bring about conspiratorial thinking. It does so, because it is embedded in the time-binding process of meta-code transmission. To cite Korzybski:²⁵

²⁴ Girard 1974: 833–850.

²⁵ Korzybski 1921.

Humans can be literally poisoned by false ideas and false teachings. Many people have a just horror at the thought of putting poison into tea or coffee, but seem unable to realize that, when they teach false ideas and false doctrines, they are poisoning the time-binding capacity of their fellow men and women. One has to stop and think! There is nothing mystical about the fact that ideas and words are energies which powerfully affect the physico-chemical base of our time-binding activities...[that have] operated to suppress their real human nature and to prevent it from expressing itself naturally and freely.

Such mental mechanisms are hard to counteract, since they are so deeply-ensconced in language and other semiotic codes, and today being amplified by right-wing voices as a plot to erode freedoms and capitalism. The Anti-Defamation League has tracked the antisemitic tropes within the Great Reset conspiracy showing how the individual words and symbols cohere into a unified narrative that is almost impossible to disassemble. Online conspiratorial memes, for instance, intimated that the World Economic Council was “controlled” by Jews who were using the Great Reset to set up this so-called one world government. It is relevant to note that the word *cabal* is derived from *Kabbalah*, the Jewish mystical interpretation of scripture. In European culture, it became associated with occult doctrines and secretive cliques, starting in the medieval period, and assuming, by the seventeenth century, its current meaning—that is, during the era of the bubonic plague. QAnon followers have used the expression, “The Cabal,” to refer to what they perceive as a secret worldwide elite organization. On their official “Q News” Telegram channel, they frequently linked the Cabal to the Great Reset, claiming that vaccines were not designed to save lives and to bring the pandemic toward its eventual end, but rather, as bioweapons concocted by the Cabal and corrupt democratic government officials and drug companies, whose goal is to mutate the genetic structure of the species. Uploaded on the channel were videos titled “Murder By ‘Vaccine” and “Doctors and Nurses Giving the Coronavirus Vaccine Will Be Tried as War Criminals.” The link between violence against health practitioners and these messages cannot be discarded, As Timberg and Dwoskin have remarked:²⁶

²⁶ Timberg and Dwoskin 2021.

QAnon, with its false claims about shadowy political forces and rampant pedophilia among Democratic leaders, is older than the pandemic, tracing its roots to anonymous postings in 2017. But the arrival of the pandemic last year supercharged QAnon's growth, as did former president Donald Trump's baseless allegations of widespread voter fraud.

The cabal meta-code is a truly powerful one, as witnessed by its incorporation into popular works of fiction, including Dan Brown's *The Da Vinci Code* (2003) and all the James Bond set of novels and movies. Pseudo-scientific works also peddle cabalism as behind historical events, from the Illuminati myth, a purported secret sixteenth century Bavarian cabal, alleged to be an all-powerful secret society who controls the world to this day, to deep state structures, which operate behind the scenes to create "illusions" such as global warming.

In his enduring 1947 masterpiece, *La peste* (translated in English in 1948 as *The Plague*),²⁷ French writer Albert Camus puts the spotlight on the Algerian city of Oran as the setting for his own existential reflections on the effects of a plague on the human psyche, with the *peste* assuming both literal and metaphorical meaning. At the literal level, the source material used by Camus for his novel was the cholera epidemic that killed a huge swath of Oran's population in 1849, although the actual setting of the novel is the 1940s. Oran was struck by the disease several times before Camus's novel, and was actually decimated by the bubonic plague in 1556. Metaphorically, Camus brought together two disparate events, the cholera epidemic and the rise of European fascism, reflecting the fragility of modern democracies in times of collective frenzy. Considered by some critics as an allegory of Nazi occupation during World War II, Camus used references to mass burials resulting from the disease as an allusion to the extermination camps of the war. The novel sets its narrative scope on the effects of pandemics on people as an imaginary "communal body." As Rene Girard has aptly observed, from antiquity onwards, the theme of plagues and pestilences and their effects on everyone and on semiotic codes has captivated everyone from time immemorial:²⁸

²⁷ Camus 1948.

²⁸ Girard 1974/1948: 833.

The plague is found everywhere in literature. It belongs to the epic with Homer, to tragedy with *Oedipus Rex*, to history with Thucydides, to the philosophical poem with Lucretius. The plague as background to the short stories of Boccaccio's *Decameron*; there fables about the plague, notably La Fontaine's "Les Animaux malades de la peste"; there are novels, such as Manzoni's *I Promessi Sposi* and Camus' *La Peste*. The theme spans the whole range of literary and even nonliterary genres, from pure fantasy to the most positive and scientific accounts. It is older than literature—much older, really, since its presence in myth and ritual in the entire world.

With the spread of covid-19, starting in early 2020, interest in ancient myths, novels, and other past real or fictional literary accounts of pandemics spiked considerably. Booklists compiled by reference services at libraries throughout the world featured novels about pandemics and plagues, listed alongside non-fiction volumes dealing with the history of plagues or with layperson treatments of viruses and their etiology. As Girard so aptly observes, mysterious illnesses, epidemics, and pandemics have always caught the interest of storytellers. In early literary-mythic portrayals, plagues were described as divine punishments, offering moral commentary on the characters in a story or on the society in which they lived. Even after scientists became knowledgeable, through the development of germ theory, about the causes of pandemics and the nature of contagions by the early twentieth century, writers continued to portray plagues in metaphorical ways, not as apocalyptic warnings or punishments from supernatural entities, but as a human-created apocalypse based in environmentally-destructive activities and corrupt social and political orders.

Concluding Remarks

As Mark Hay has insightfully observed, as the coronavirus started to recede, because of vaccinations, the denialist discourses did not.²⁹ They were redirected—a common trait of all forms of dangerous denialism. So, “rather than accept that the pandemic didn’t precipitate the dystopia

²⁹ Hay 2022.

they predicted, several prominent conspiracy theorist channels argue that covid was actually just the first major attempt at—or phase in—the Great Reset.” As Deleuze and Guattari maintained, it is almost impossible to dismantle a rhizomatic discourse system, given that, as inter-codability would add, the underlying meta-code that sustains it is rooted in the time-binding historical paradigm brought forward in time via language, stories, symbols, and other nodes in the network.

Denial discourses are hardly matters of differences of opinion, as Crichton suggested cleverly in his novel. They affect people’s minds indelibly, motivating distrust and promoting false beliefs that there are nefarious actors behind the scenes that are running the world—actors who appear normal and authoritative. The discourses have spread falsehoods about such dire events as the Holocaust, global warming, and pandemics in order to reshape politics and people through their own form of fear-mongering. The semiotic view espoused here is that a false belief such as the one encoded by the Great Reset Conspiracy Theory could only have arisen from the reactivation of an age-old cabalistic meta-code, which, once accepted as true, filters how reality is construed, putting up cognitive-emotive barriers to counter-arguments. As Crichton falsely argued throughout his novel, scientific arguments and research findings related to global warming are nothing more than attempts by the cabalists to take control of things, or at the very least, to keep them as they are for self-benefit. Significantly, critiques of the novel have not been effective, as it continues to be popular among conspiracists to this day, and even more broadly. The antidote to denial conspiracism is, clearly, not to attack believers directly. As history has repeatedly shown, this has never been successful; it just exacerbates the division between people. The best approach is to resort to counter-narratives, as did Boccaccio and Defoe, among others, exposing how denial discourses twist the meanings of signs.

If the hidden meanings of nefarious discourses are not tackled head on, then the real danger is that historical amnesia will emerge, leading to an inability to recognize the recycling of hate-based codes. Without this ability to “see” through them, not only will they continue to proliferate, but will arguably become even more dangerous. This may explain why QAnon-type conspiracy groups gain so much traction—they spread misinformation broadly by making it seem relevant in the moment. In this constantly-mutable ecosystem, any new denial discourse that emerges, based on the

cabalistic meta-code, will be perceived as “new information,” suggesting something sinister behind the scenes—hence the perpetuation of the false myth over and over. That is the real danger we face today.

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Criminal Law and the Covid-19 Pandemic in Portugal

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DOI | 10.14195/2184-9781_6_8

ABSTRACT

This text outlines the main challenges posed by the COVID-19 pandemic to the Portuguese criminal justice system, notably the difficulty in establishing liability for spreading the disease. It concludes that an

offence protecting public health is lacking, in consequence of which excessive use was made of – inter alia – the offence of disobedience.

KEYWORDS

criminal law, covid-19, pandemic, public health, disobedience, state of emergency

1. Introduction¹

1.1. Institutional framework

In Portugal, the institutions with competence to address the Covid-19 crisis through criminal law are, in essence, the same that bear that competence in normal times. However, in a crisis of this character, the role of the President at the legislative level is more impactful than normally,² as the President plays a key role in *declaring* the state of emergency.³

The relevant constitutional provisions to that effect are concretised by Law no. 44/86, of 30 September (Legal Regime of the States of Siege and of Emergency: LRSSE), which prescribes that the Government is the competent body for executing or implementing the state of siege and the of emergency.⁴

¹ This analysis focuses on legislative and jurisprudential developments that took place during the peak of the pandemic crisis, yet on specific points it addresses ulterior events.

² Portugal has a semi-presidential political system.

³ Art. 134 of the Constitution.

⁴ Art. 17.

The fact that this *implementation* is entrusted to the Government arguably stems from efficacy concerns: as it is charged with carrying out the general policy of the country and is the supreme body of the whole public administration, it is trusted to be the most adequate for exerting executive functions also in times of constitutional exception, given its privileged access to information and its particular organisational powers. The fact that it must regularly report to the President and the Parliament should ensure that the equilibria among the different powers of the State are not entirely disrupted.⁵

The procedure for declaring a state of siege or of emergency is a “complex mechanism of interdependence” that involves “all sovereignty bodies with political competences”.⁶ While it is the President that declares the state of emergency, prior consultation of the Government and prior authorisation by the Parliament are required;⁷ ministerial countersignature of the decree (*referenda ministerial*) is yet necessary.⁸ This intricate, multilateral procedure is illustrative of the tendency in modern constitutionalism to “proceduralise the practise of the most important acts of State”.⁹

1.2. State of emergency

The question as to whether the declaration of the state of emergency was indeed necessary to address the difficulties brought by the pandemic depends on a previous question, namely that as to which fundamental rights would be affected by the measures intended to be enacted. While some claimed that a measure such as mandatory confinement would essentially restrict the right to movement enshrined in Art. 44 of the Constitution, the prevailing view was (and in our view rightly so) that it would restrict the right to liberty enshrined in Art. 27 – as the Constitutional Court eventually upheld in respect of mandatory quarantine decisions taken in the Autonomous Region of Azores.¹⁰ The variance is relevant because the latter

⁵ See Ombudsman (2021), 21.

⁶ Canotilho (2003), 1104.

⁷ Arts. 161 (l) and 179 (3) (f), and Arts. 138 (1) and 197 (1) (f) of the Constitution.

⁸ Certain acts undertaken by the President require the countersignature by the Government, or otherwise they will be deemed as inexistent or nugatory: Art. 140 of the Constitution.

⁹ Canotilho (2003), 1105.

¹⁰ See further *infra*, § 4.1.

right, unlike the former, can only be restricted in a set number of hypotheses listed in Art. 27 (2) and (3) of the Constitution, none of which encompasses sanitary crises, with the consequence that only under a state of constitutional exception could such a restriction be imposed. Thus, the road that was followed was that of declaring the state of emergency.¹¹

For the first time ever under the democratic Constitution of 1976, a state of emergency was declared in Portugal, by Presidential Decree no. 14-A/2020, of 18 March, based on Art. 19 of the Constitution, which sets out the circumstances in which the exercise of rights, freedoms or guarantees may be suspended. They unfold into two main modalities: state of siege and state of emergency. Any of them may be declared only in case of: (i) actual or imminent aggression by foreign forces; (ii) severe menace to, or disruption of the democratic constitutional order; or (iii) public calamity.

The difference between the states of siege and of emergency is essentially a difference of degree: the latter is declared in cases “of a lesser gravity”. However, the LRSSE sheds further light on this issue by drawing a distinction based in part on qualitative elements: the state of siege is declared when acts of force or insurrection are taking place or are imminent and they put in jeopardy the sovereignty, independence, territorial integrity or democratic constitutional order of the country; the state of emergency is declared *v.g.* when a situation of public calamity is taking place or is imminent.¹² In any case, the states of siege and of emergency share many traits in terms of their effects,¹³ notably that neither may affect such paramount rights as the right to life, the prohibition of retroactivity of criminal laws and procedural rights of defendants.

The hypothesis that served as the basis for the state of emergency declared by the President was that of ‘public calamity’. The Presidential Decree was shortly after implemented by the Government through Decree no. 2-A/2020, of 20 March. The core purpose of the former was to confer on the Government the legitimacy to approve the latter.

¹¹ Although, ironically, the Presidential Decree would then refer to Art. 44 (*inter alia*), but not to Art. 27: in critical analysis, see Novais (2020a), 85 et seqq.

¹² Arts. 8 and 9 LRSSE.

¹³ Although there are also significant differences, as expounded in Ombudsman (2021), 20 et seqq.

1.3. Decree no. 2-A/2020 and subsequent legislative developments

The Decree no. 2-A/2020 established a duty of mandatory confinement at home or at a health facility, applicable to individuals ill with Covid-19 or infected with SARS-Cov2 and individuals whose active vigilance was declared by a health authority or other health professionals. It also established the shutting of certain infrastructures and establishments, namely recreational (v.g. discos and bars), cultural (v.g. cinemas and theatres), sports-related (v.g. football courts and swimming pools), open-space activities (v.g. parades and folk exhibitions), gambling-related, restaurants or similar, and spas or similar. In addition, with some exceptions and under certain conditions, it suspended operations of retail traders such as supermarkets, bakeries and kiosks, *inter alia*, as well as activities of services provision in establishments open to the public.

Most importantly for these purposes, the Decree established an offence of disobedience that will be addressed further below, with a view to reducing the risk of contagion and giving effect to the measures preventing and reacting against the pandemic. This was deemed necessary due to the absence of a criminal offence protecting public health.

Over the subsequent months and for over a year, the country alternated between the state of emergency and administrative states of exception (of calamity, contingency and alert), enacted through an endless array of legislative acts. Their analysis would over-complicate, to no meaningful advantage, the analysis to be provided here. The basic notions to bear in mind are that: (i) under the different periods of constitutional exception, the types of problems of relevance for criminal law were essentially similar; (ii) the same applies, *mutatis mutandis*, to the different periods of administrative exception; (iii) the terms of the problems under (i) and (ii) differ fundamentally, as the level of individual rights' restriction admitted under the former is much higher than under the latter.

2. Criminal liability for spreading of the disease

2.1. Offences against life and limb

Offences such as homicide and bodily harm – where liability consists of actually causing a damage – could theoretically apply in the context of a pandemic crisis like this, but they could apply *only* where the intention of the person causing the infection was all along to cause death, bodily harm,¹⁴ etc. Bodily harm is punished with imprisonment for up to 3 years or a fine, or with imprisonment from 2 to 10 years if committed in an aggravated form, *e.g.* when it causes a particularly painful or a permanent disease, or a danger to life.¹⁵

Although *attempt* to commit some of these offences is punishable,¹⁶ this would still require the conduct to be directed against a concretely identified person, which excludes cases in which a person who knows to be infected wanders willingly across a public space, even if this person acknowledges that this may cause others to be infected and accepts that such an event befalls.

All these offences are also punished when committed with mere *negligence*, when the breach of a duty of care materialises into the prohibited result.¹⁷ However, it would be very difficult to establish a connection between the breach of such duty (stemming from an order of prophylactic isolation in case of a suspicious contact or of confinement in case of actual infection) and the occurrence of the prohibited result.

Thus, the relevance of these offences was highly limited or indeed non-existent.

2.2. Propagation of disease

During the pandemic the legislator did not enact any new offence designed to protect public health. An offence of propagation of disease was

¹⁴ Even though it is not necessary that the person actually develops symptoms, but rather it suffices that he/she develops a 'state of disease' (whether through an infection or through contagion): see Faria (2012), 298 et seq.

¹⁵ Arts. 143 and 144 (b), (c) and (d) of the Penal Code (PC).

¹⁶ Art. 23 (1) PC.

¹⁷ Arts. 137 and 148 PC.

already in place (Art. 283 PC), punished (in its standard form) with imprisonment from 1 to 8 years. It is conceived for situations where an actual propagation of a contagious disease occurs *and* such propagation causes a hazard to the life or a serious hazard to the physical integrity of another person. This *result* (*viz.*, the creation of a concrete danger) is therefore an integral element of the offence, although it is not necessary that it translates into an actual *harm* to life or limb, which are the protected legal interests. Indeed, this offence is generally deemed to protect life and physical integrity as individual legal interests, and only in a reflex manner public health as a supra-individual legal interest.¹⁸

It constitutes an offence of common danger, as it requires that the propagation of the disease creates a real and actual danger to the life or physical integrity of a concrete person, even if in this legal structure that person stands not simply as a victim of the crime but as a representative of the community as a whole.¹⁹

In view of the above it was clear all along that this offence would be of very limited relevance in cases where individuals subject to mandatory confinement would evade it. From a procedural standpoint, it would be obviously difficult to prove the chain of propagation, as the disease at issue here is exceptionally contagious, transmissible by multiple means, has a large incubation period and is often symptomless.²⁰ At the substantive level difficulties were even higher: firstly, it is not even clear that the theory of objective imputation should apply in the realm of offences of danger; and at any rate the causal nexus between the conduct and the result of danger is quite difficult to establish.

Since the offence of propagation of disease consists not of a *danger of contagion* but rather of a *danger to life or limb caused by a contagion*, very hardly could it be of any avail in these circumstances. To this day, no public offence was enacted in the Portuguese legal system which shows adequate to a pandemic of this sort. The pandemic shed light on this punitive gap, but during the crisis the legislator took instead the road of punishing disobedience.²¹

¹⁸ See Antunes et al. (2020), 15; Sousa (2020), 154.

¹⁹ See Cunha (1999), 1007 et seq.

²⁰ See Silva (2020), 201.

²¹ Data indicates an increase of c. 58% in the number of crimes of disobedience recorded by the police in 2020 (4.106 cases in total) compared to the previous year (Direção-Geral da Política de

2.3. Disobedience

Decree no. 2-A/2020 and subsequent Decrees established rules on disobedience, triggering wide public debate and constitutionality questions, namely of an organic character, as they were approved by the Government rather than by the Parliament and without its authorisation.

Art. 3 (2) established that a person would be committing an offence of disobedience if he/she breaches the duty of confinement, and Art. 32 (1) (b) enabled authorities to issue orders and to prescribe that, for the purposes of Art. 348 PC, the breach of that duty or of rules on the shutting down or suspension of certain establishments and activities would constitute disobedience.

Art. 32 (1) (b) was not particularly problematic,²² as it did not apparently introduce any new offence, but only recalled a pre-existing one,²³ namely that of Art. 348 (1) (b) PC (disobedience prescribed by a public agent – pure disobedience), whereby an authority or a civil servant issues an order and formally warns the addressee that they will be committing a crime of disobedience should they fail to act in the indicated manner.²⁴

The fundamental problems concerned Art. 3 (2), in which the prohibited behaviour is instead fully described in a legal norm, or in which a public agent issues an order but the punishment of the disobedience to such an order follows from a legal norm rather than from a prescription by the agent him/herself (see also Art. 348 (1) (a) PC). In this modality (disobedience prescribed by law – impure disobedience), the concept of disobedience is mobilised by the legislator to punish a behaviour that it has itself defined in a relatively self-standing manner: in the case, the breach of the duty of confinement. It follows that, while pure disobedience envisages to secure the respect for public orders as such, impure disobedience is more closely linked to the very legal interest that is affronted by the behaviour prohibited by law: in the case, the interests put at risk by the pandemic.

Justiça, 2021, 250).

²² See Brandão (2020b), para 2, para 5.

²³ On the classic offence of disobedience, see Monteiro (2001), 349 et seqq.; Borges (2011).

²⁴ This may also help to explain the ample use that was made of this provision at a certain point of the crisis, with several criminal proceedings having reportedly been initiated on this basis, namely in cases of wide gatherings in establishments such as restaurants and cafés.

Considering that Art. 32 (1) (b) (disobedience prescribed by a public agent) also refers to the duty of confinement established in Art. 3 (and not only to the other rules concerning the shutting or the suspension of certain establishments and activities), it is unclear that the intention of the legislator was indeed for Art. 3 to constitute an instance of ‘disobedience prescribed by law’. Be that as it may, the fact is that, in practice, such an interpretation was taken in some cases, leading to criminal procedures based on Art. 3 alone (rather than in conjunction with Art. 32 (1) (b) and with Art. 348 (1) (b) PC).

Even within the mindset of that interpretation, it may still be argued that such an offence of improper disobedience merely concretised an already existing offence: Art. 7 of the LRSSE (the already mentioned legal regime of the states of siege and of emergency). In its original wording, this provision established that the breach of the declaration of the state of siege / emergency, namely concerning its execution, entailed committing a responsibility offence. This offence was amended by Organic Law no. 1/2012, of 11 May, which instead of ‘responsibility offences’ now referred to an ‘offence of disobedience’. Therefore, it converted it into a common offence, which any citizen is liable to commit.

However, the offence of disobedience at issue here was not (nor could it have been) provided for in the presidential decree that declared the state of emergency, but rather in a governmental decree that implemented it. This, in our view, lies beyond the range of possible meanings borne by Art. 7 LRSSE, and therefore an interpretation according to which this provision encompasses the breach of such governmental decree could hardly comply with the principle of legality in its dimension of determinability (*lex certa*).²⁵ If Art. 3 Decree no. 2-A/2020 did not simply concretise Art. 7 LRSSE, then its organic legitimacy was doubtful, because it was enacted by the Government without authorisation by the Parliament. Case law was delivered by judicial courts upholding this very understanding,²⁶ but that was not the view taken by the Constitutional Court in ruling no. 921/2021, of 7 December, which held that such legitimacy is ensured by the “normative continuity” between the LRSEE, the Parliament’s authorisation for the President to declare the

²⁵ On this discussion, see e.g. Oliveira (2020), 501 et seqq., with further references; Andrade (2021), 318 et seq.

²⁶ See e.g. the ruling of the Court of First Instance of Oeiras, 25 September 2020, process 23/20.3PJOER, and the ruling of the High Court of Guimarães, 9 November 2020, process 119/20.1PBCHV.G1.

state of emergency, the President's declaration of the state of emergency and the Government's Decree implementing it. The ruling no. 557/2022, later delivered by a different composition of 5 judges, ran in a different direction, but the jurisprudential conflict was solved by the Plenary of the Court in favour of the former approach (albeit with 5 dissenting opinions), through the ruling no. 196/2023.

Judicial courts also held unconstitutional, on organic grounds, Art. 43 (6) of the Decree no. 2-B/2020, according to which disobedience / resistance to legitimate orders, when committed in breach of that Decree, are sanctioned in the terms prescribed in the criminal law and their penalties elevated in 1/3 in their minimum and maximum limits.²⁷ However, the Constitutional Court, in the ruling no. 352/2021, of 27 May, concluded again for *non-unconstitutionality*. The issue here was not whether the Decree merely concretised a pre-existing offence (it did, as this was a case of disobedience prescribed by a public agent, covered by Art. 348 (1) (b) PC)), but whether the Government could, absent authorisation of the Parliament, *elevate the applicable sanctions*. The Court held that: the declaration of a state of emergency allows not only (in its 'substantial dimension') for an abnormal compression of fundamental rights, but also (in its 'organic dimension') for an abnormal expansion of the competences of the executive power; and while fundamental rights restrictions fall within the reserved competence of the Parliament, it is the executive that holds the competence to enact the emergency measures required by the circumstances; thus, under a state of emergency, not only are basic rights affected to enable a defence of the constitutional order, but also State powers are reorganised to that end.²⁸

3. Criminal liability of medical staff in *triage* situations

In Portugal, no parliamentary law is in force that explicitly regulates medical decisions in *triage* situations, nor was any such special law enacted in the context of the Covid-19 crisis. As far as it was possible to determine,

²⁷ See e.g. the ruling of High Court of Guimarães, 9 November 2020, process 119/20.1PBCHV.G1 *cit.*, and the ruling of the High Court of Lisbon, 24 March 2021, process 308/20.9PLLR.L1-3.

²⁸ For a critical analysis of this ruling, see Sánchez (2021), 103 et seqq.

no case has reached the courts concerning wrongful medical decisions taken in triage situations.

Nevertheless, the National Council of Ethics and Medical Deontology (*Conselho Nacional de Ética e Deontologia Médicas – CNED*) – a consultative body of the Doctors’ Association – acknowledged the need to issue ethical recommendations for ‘situations of medical practice in a catastrophe’. In November 2020 it published Opinion no. 58 providing “ethical considerations and recommendations regarding the situations caused by the Covid-19 pandemic”²⁹.

It noted that the pandemic could carry scarcity of beds, ventilators and human resources (due either to illness or to quarantine) in intensive care units. In the event of a scarcity of resources, it recommended that they be reserved to those regarding whom the probability of survival after treatment is higher, drawing on an idea of “saving more lives and more years of life”. It also recommended certain criteria *not* to be followed, such as the order of admission or arrival of hospital emergency services. While acknowledging that illness befalls often upon the elderly, the Council upheld that age alone should not serve as a triage criterion, but should only be taken into account in conjunction with other factors such as existing comorbidities and the functioning levels of multiple organs. Moreover, drawing on what is already a well-established rule for non-emergency situations, it recommended intensive therapy not to be performed where it would bring minimal advantages for patients and be unlikely to succeed due to an advanced or terminal illness.

However, at a strictly legal level, in a democratic State grounded on the equal dignity of all persons and on the equal value of all lives regardless of the person’s condition,³⁰ the decision to deploy or withhold resources should arguably not differ fundamentally from an ordinary setting to a pandemic one.³¹ Furthermore, the declaration of a state of siege or emergency cannot in any circumstances affect the rights to life and to physical integrity.³²

From the above recommendations, it is possible to conclude that, in the Council’s view: (1) in balancing multiple lives, preference should be given

²⁹ In <https://ordemdosmedicos.pt/files/pdfs/gvAX-Parecer-CNEDM58vf-paginas-1-4.pdf> (accessed 27 May 2025).

³⁰ See notably Arts. 1, 2 and 24 of the Constitution.

³¹ See de Brito (2021).

³² Art. 19 (5) of the Constitution.

to the *larger number of lives*; and (2) in balancing one life against another, preference should be given to that where the prospect of *enduring further years* is higher.

The recommendations contained in Opinion no. 58 sparked debate, and some authors argued that by following them doctors could incur criminal liability.³³ The recommendations do raise several questions: in balancing multiple lives, should the number of lives indeed be relevant?; in balancing one life against another, should the prospect of *enduring further years* indeed be given preference?; can life be weighed?; should ongoing therapeutic processes be possible to interrupt in favour of subsequent patients?

These questions call into consideration the causes of justification and exculpation regulated in the PC, particularly that of conflict of duties: according to Art. 36, wrongfulness is excluded if, in the event of a conflict of multiple legal obligations, the person undertakes to fulfil a duty of at least the same strength as that which is thereby sacrificed. Portuguese legal literature tends to defend that one such conflict will only in fact exist where there are multiple obligations to *act* and only one of them can be complied with.³⁴ According to this view, and for those who consider that ‘turning off the machine’ is an *action*, interrupting the therapeutic means securing the life of a patient whose prospects of survival are still reasonable in favour of another patient, even if the latter has better prospects of survival, does not meet the requirements of Art. 36 and will therefore constitute a homicide. In these cases, the duty to refrain from acting prevails over the duty to act.³⁵ As for those who uphold that ‘turning off the machine’ is a discontinuation of the treatment and, therefore, an *omission*,³⁶ the above case will amount to a situation of conflict of duties: between the duty to continue the treatment of the first patient and the duty to initiate the treatment of the second patient. In these cases, the position has generally been followed that the duty to continue a treatment supersedes the duty to initiate a new treatment. ‘Turning off the machine’ will, from this perspective, constitute a homicide by omission. In any event, ascertaining the relative weight of the conflicting duties requires taking into consideration all the circumstances

³³ See Palma (2020).

³⁴ Dias (2019), 548.

³⁵ See Palma (2020).

³⁶ See Dias (2008), 208.

of the case.³⁷ In this light, one may, in the abstract, rule out the possibility to justify the option to grant – from the outset – treatment to a patient with a less severe illness and greater prospects of survival rather than to a patient with a more serious illness and narrower prospects of survival.³⁸

If an act is wrongful, the doctor may nevertheless be exculpated due to it being unreasonable to require him/her, in the circumstances of the case, to have acted in accordance with the law (Art. 35 PC – *estado de necessidade desculpante*).³⁹ These are, however, very complex and dubious situations the solution to which can be found only in view of the case globally considered.

4. Further challenges in Portugal

4.1. Abusive vaccination

Certain ‘offences of responsibility’ (provided for in the Law no. 34/87 of 16 July) by holders of political office or of high public office were applied in the context of the pandemic in cases of abusive vaccination, notably in situations where a person would take undue priority in the set order for being vaccinated. However, this situation has triggered problems also in relation to persons other than holders of political or high public office, *i.e.* other civil servants and even ordinary citizens. The offences at stake include abuse of power, abuse of trust, receiving of an undue advantage, embezzlement or withholding of assistance, *inter alia*; also false declarations, by providing wrongful information to health authorities so as to gain priority in the vaccination order.⁴⁰

By June 2021, it was reported that 216 such criminal proceedings had been initiated and over 50 individuals formally designated as defendants.⁴¹ In February 2021 a Draft Law had already been introduced with a view to establishing a new offence that would not fall in the category of the

³⁷ Dias (2019), 549.

³⁸ See Palma (2020).

³⁹ See Dias (2019), 710 et seq.

⁴⁰ See <https://pgd-coimbra.ministeriopublico.pt/pagina/covid-19-falsas-declaracoes-acusacao-mp-diap-regional-de-coimbra> (accessed 27 May 2025).

⁴¹ See <https://www.policiajudiciaria.pt/inqueritos-relacionados-com-o-processo-de-vacinacao-contra-a-covid-19/> (accessed 27 May 2025).

so-called specific offences (*delicta propria*), where the perpetrator must hold a certain (in the case, public) status, but which would instead impend upon any citizen.⁴² The offence would be named ‘undue vaccination’ and the applicable penalty would be imprisonment up to 3 years or a fine (unless a more severe penalty should apply *ex vi* of other provisions, notably of the mentioned, already existing, *delicta propria*).⁴³ The prohibited conduct would consist of, “by oneself or by proxy, giving or accepting vaccination, for oneself or for another person, in breach of the criteria defined in a vaccination plan”. However, with the dissolution of the Parliament, this legislative initiative eventually fell through on 28 March 2022, which in our view was a salubrious outcome: this would have been a classic example of hasty and irrational criminal policy⁴⁴ and it would have resulted in over-criminalisation, considering the already existing offences mentioned above.⁴⁵

4.2. Decisions of mandatory quarantine and constitutionality issues

It is also worth mentioning the case law of the Constitutional Court on the issue of mandatory quarantine applied in the Autonomous Region of Azores: the Court held unconstitutional points (1) to (4) and (7) of the Resolution of the Council of the [Regional] Government no. 77/2020, of 27 March, and points 3 (e) and 11 of the Resolution no. 123/2020 of the same regional organ, which imposed mandatory confinement for 14 days on passengers landing in the Autonomous Region of Azores. In the case at issue in that ruling, the person had been confined in a hotel room, without access to any outside space or any other area of the hotel, including the corridors. The court of criminal instruction of Ponta Delgada refused to apply those provisions on grounds of unconstitutionality, and in consequence it granted the measure of *habeas corpus* that had been requested by the individual in question.

⁴² Draft Law no. 665/XIV/2, in www.parlamento.pt, 2, *et passim* (accessed 27 May 2025).

⁴³ And it would be inserted into Decree-Law no. 28/84 (on anti-economic infractions and infractions against public health), Art. 22-A.

⁴⁴ See, in general, Caeiro (2018), 267 *et seqq.*

⁴⁵ See also the Opinion of the Superior Council of Magistrates, the Superior Council of the Public Prosecution and the Bar Association, in <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=45727> (accessed 27 May 2025).

The public prosecution lodged an appeal of that decision to the Constitutional Court, which is mandatory in cases where a judicial court refuses the application of a norm on constitutional grounds. The Constitutional Court also held the norm to be unconstitutional, based on organic arguments.⁴⁶ The Court held this confinement measure to constitute a restriction of the right to liberty enshrined in Art. 27 (1) and (2) of the Constitution, as this is “evidently” a matter falling within the legislative competence reserved to Parliament (Art. 165 1) (b) of the Constitution), which had not been delegated, and which could only have been delegated to the central – not to the Regional – Government (Arts. 227 (1) (b) and 228 (1) of the Constitution).

One discussion surrounding this issue is whether the imposition of a confinement measure of this character should be regarded as a restriction of the mentioned right to liberty, instead of the right to movement enshrined in Art. 44 of the Constitution. The Constitutional Court took the former approach, but it did assert that its conclusion would not have been different had it followed the latter approach. This discussion has very meaningful legal repercussions⁴⁷ – *v.g.* regarding restriction of the freedom of movement across the national territory⁴⁸ –, but they touch upon aspects other than the organic issue that was in discussion in this ruling, since restrictions of Art. 44 of the Constitution fall as well within the legislative competence reserved for Parliament in Art. 165 (1) (b) of the Constitution.⁴⁹

Subsequent rulings addressed similar or somehow approximate problems, and the verdict was in all cases of unconstitutionality – and in all cases the voting was unanimous: rulings no. 687/2020, of 26 November, no. 729/2020, of 10 December, and no. 173/2021, of 24 March.⁵⁰

⁴⁶ Constitutional Court, 31 July 2020, 424/2020.

⁴⁷ See Antunes et al. (2020), 15.

⁴⁸ See Antunes (2023b), 166 et seq.

⁴⁹ On the discussion, do however see, e.g. Novais (2020a), 95 et seqq., and Novais (2020b); Alexandrino (2020); and other references mentioned in Constitutional Court, 31 July 2020, 424/2020, para 2.2.4.; see also Pereira & Caires (2020), 716 et seqq.

⁵⁰ All rulings available in www.tribunalconstitucional.pt. Accessed 27 April 2023.

4.3. Duration of criminal proceedings and time-bars

Even before the state of emergency was declared for the first time, exceptional measures had been enacted in reaction to the pandemic through the Decree-Law no. 10-A/2020 of 13 March, which included provisions on deadlines for procedural acts. However, the most relevant and impactful legal instrument was Law no 1-A/2020, of 19 March, enacted one day after the Presidential Decree no. 14-A/2020, which declared the state of emergency.

a) Procedural issues

Law no 1-A/2020, of 19 March (later amended multiple times) enacted a set of exceptional and temporary measures in reaction to the Covid-19 crisis, among which measures concerning criminal procedural deadlines.⁵¹

Based on Art. 7 (1) and (2), all deadlines for the practice of procedural acts of a non-urgent character were suspended until the exceptional situation would cease, with two exceptions: the case where all subjects involved agreed that conditions were met for the act to be practiced through informatic or otherwise remote means; and the issuing of a final decision in relation to criminal procedures regarding which the court and other authorities deemed unnecessary that further procedural measures be conducted.

As for proceedings of an urgent character, here too were deadlines as a rule suspended. The exceptions were the cases where the practice of the act through remote means was impossible. As for acts to be practised with the physical presence of the subjects, these would only include acts involving fundamental individual rights – *v.g.* involving minors in a situation of risk or acts and trials of defendants deprived of liberty –, and only insofar as the number of individuals to be present would not exceed the one recommended by health authorities. The rule was later inverted: urgent acts would be practised unless some exceptions were met, but, considering the scope of these exceptions, the differences to the original regime were in practice minor.⁵²

⁵¹ In further detail on these measures, see Cardoso (2020), 585 et seqq.

⁵² See *ibid.*, p. 595.

b) Substantive issues

However, the main points of contention regarding this exceptional regime arguably concern the substantive, rather than the procedural level, more specifically the provision according to which the pandemic situation would suspend statutory limitations of all types of procedures.⁵³

As in several other legal systems, the classification of statutory limitations of the criminal procedure or of the penalty as either substantive or procedural is controversial in Portugal.⁵⁴ Be that as it may, even those who assign mainly procedural nature on these norms tend to agree that they bear a particular axiological density, with the consequence that they are, to some extent at least, subject to the requirements of the *nullum crimen* principle. Most consequentially, the Constitutional Court itself acknowledges the relevance of this principle for norms of criminal procedure.⁵⁵

Therefore, some authors upheld that this suspension of time-bars, if applied to proceedings concerning acts committed prior to the entry into force of Law no. 1-A/2020, would be retroactive *in malam partem* and hence unconstitutional,⁵⁶ and this was the view taken by some judicial courts (although there is also case law in a different direction).⁵⁷ The issue was eventually addressed by the Constitutional Court, in ruling no. 500/2021 of 9 June,⁵⁸ concerning administrative punitive proceedings, where it was unanimously held that such an interpretation was *not* unconstitutional.

After dismissing the claim that such an interpretation would breach the constitutional limits of the state of emergency,⁵⁹ the Court held that the legality principle enshrined in Art. 29 of the Constitution – including the prohibition of *in malam partem* retroactivity, which according to the ruling is grounded in part on the intent to control the exercise of punitive power by the State and in part on the principle of trust – applies in line of principle to statutory limitations of the procedure. However – the Court noted –, the suspension of time-bars introduced by Art. 7 (3) of the Law no 1-A/2020

⁵³ In addition to other terms, as further detailed in Cardoso & Baptista (2020), 603–613.

⁵⁴ See Dias (1993), 698 et seqq.; Antunes (2023a), 14; Caeiro (2001), 231 et seqq.

⁵⁵ See e.g. Antunes (2023a), 32 et seq.

⁵⁶ See Cardoso & Baptista (2020), 608 et seq.; also, albeit in less definitive terms, Martins (2020), 7.

⁵⁷ See the several rulings indicated in paras 19–20 of the ruling of the Constitutional Court no. 500/2021.

⁵⁸ And later in the rulings nos. 660/2021 and 798/2021.

⁵⁹ Drawing, to this effect, on elements of the reasoning underpinning the ruling no. 352/2021, assessed above.

was so peculiar that it did not hamper upon any of the two rationales mentioned above: it was not arbitrary, nor did it breach the principle of trust, as it was enacted to address an absolutely abnormal and inevitable lockdown of the justice system which was by no means attributable to the State.

As noted, this ruling concerned punitive administrative proceedings, but in the light of the reasoning deployed by the Court it would plausibly extend to criminal proceedings as well⁶⁰ – which is our view would be highly problematic: in criminal proceedings the principle of legality should admit of no relativisation whatsoever, however abnormal supervening circumstances might be.

4.4. Special rules on custodial detention and imprisonment

A set of measures was enacted in view of the “specificities of the penitentiary environment, considering both the high incidence of health problems and the ageing of its population”, with the goal of “actively and strategically avoiding infection upsurges in prison facilities and their spreading”.⁶¹ The Ombudsman had recommended this approach,⁶² and the General-Direction of the Social Reintegration and Prison Services had also adopted measures aimed at reducing the risk of Covid-19 permeating the penitentiary system.⁶³ The legislator carried these views forward by enacting Law no. 9/2020, of 10 April, creating an exceptional regime rendering the enforcement of penalties and of acts of grace more flexible in the context of the pandemic.

This law established: a) a partial pardon of penalties of imprisonment; b) a special regime of indult; c) an extraordinary regime of leave licenses for inmates; and d) an extraordinary regime of anticipation of early release. These rules did not apply, in any circumstance, to individuals convicted

⁶⁰ In fact, in para 31 the Court comes close to actually asserting this. However, in the abovementioned ruling no. 660/2021, 1 of the 5 judges attached an Opinion underscoring that, in her view, the situation is different as far as criminal proceedings are concerned.

⁶¹ Motivation of the Draft Law no. 23/XIV, in www.parlamento.pt (accessed 27 May 2025).

⁶² Recommendation no. 4/B/2020, of 26 March, addressed to the Minister of Justice, in <https://www.provedor-jus.pt/en/documentos/sistema-prisional-prevencao-do-contagio-sars-cov2-4-b-2020/> (accessed 27 May 2025).

⁶³ See <https://justica.gov.pt/COVID-19-Medidas-adoptadas-na-Justica#ServiosdeReinseroePrisionaisDGRSP> (accessed 27 May 2025).

of crimes committed against members of the police or security forces, members of the armed forces and servants or guards of prison services in the exercise of their functions. On the other hand, these measures applied only to inmates sentenced through a final decision (*res judicata*) before their entry into force (11 April) and who were already serving the sentence.

a) Pardon

Pardon was possible to grant only to inmates convicted to a penalty of imprisonment⁶⁴ for less than 2 years, or convicted to larger penalties if the period remaining to be served was inferior to 2 years, and at least 1/2 of the penalty had been served.⁶⁵ Pardon was granted on the condition that its beneficiary would not commit an intentional offence in the subsequent year, or otherwise the pardoned penalty would be added to that applied for the new offence.⁶⁶ There is a somewhat wide number of offences for which pardon could not be granted, v.g. homicide, domestic violence, crimes against personal freedom or crimes against sexual freedom and self-determination.⁶⁷

Nevertheless, this regime was still applicable in cases that may be said to involve meaningful preventative concerns. This raised some debate in legal literature, namely that further priority should have been given to granting leave licenses over the approach of pardoning the penalty.⁶⁸ The latter carries greater sacrifice to the preventative purposes of penal sanctions, as it entails the extinction of criminal liability (notwithstanding the possibility of revocation).⁶⁹

⁶⁴ This includes not only imprisonment *sensu proprio*, but also other cases of imprisonment resulting from non-compliance with a fine or with substitutive penalties: Art. 2 (3) Law no. 9/2020.

⁶⁵ Art. 2 (1) and (2).

⁶⁶ Art. 2 (7).

⁶⁷ Arts. 2 (6) and 3 (5).

⁶⁸ See e.g. Brandão (2020a), 11 et seqq. and 16.

⁶⁹ Art. 4 (2).

b) Indult

Law no. 9/2020 established that the member of the Government responsible for the area of Justice could propose to the President a full or partial indult of imprisonment penalties applied to inmates who, at the entry into force of the exceptional regime, were 65 years old or more and suffered from a physical or mental illness or had a level of autonomy incompatible with staying in a penitentiary environment during such a pandemic crisis.⁷⁰ This possibility, however, did not apply to the offences for which pardon was also excluded, and it would yet have to comply with general rules on indult, namely insofar as concerns its revocation.⁷¹

c) Leave licences

Special leave licences would be fulfilled by placing the convict in house custody, subject to surveillance and certain obligations. This possibility depended on certain conditions – some of them equivalent to those required for ordinary leave licences –,⁷² and the leave would have a duration of 45 days, liable to renewal, with the period lapsed under the licence being computed as served time unless the licence were revoked.⁷³ This period of 45 days contrasts acutely with that of normal leave licences, which have a maximum limit ranging from 5 to 7 days, when granted by a court, and of 3 days, when granted by the director of the prison facility.⁷⁴

One of those special conditions was that the inmate was serving the sentence in the common regime or in the (more permissive) open regime,⁷⁵ and has already been granted one or two leave licences, respectively.⁷⁶

⁷⁰ Art. 3 (1).

⁷¹ Art. 3 (4) and (5) and Arts. 223, 227 (2) and (3) and 228 of the Code of Enforcement of Penalties and Measures involving Deprivation of Liberty (Law no. 115/2009, of 12 October, as amended by Law no. 27/2019 of 28 March).

⁷² Art. 4 (1) (a).

⁷³ Art. 4 (1), (3) and (10); this computation as served time was in any event already the case in normal conditions: see Art. 77 (1) of the Code of Enforcement.

⁷⁴ Arts. 79 (4) and 80 (2) of the Code of Enforcement.

⁷⁵ During the leave licence, convicts who were serving the sentence under this open regime could be admitted to maintain the professional activity that they had already been admitted to carry out outside of the prison facility in normal circumstances: Art. 4 (4) of the Law no. 9/2020.

⁷⁶ See Art. 4 (1) (b) and (c) of the Law no. 9/2020.

Inmates serving the sentence in the stricter security regime were excluded from the possibility to be granted these special licences. The mentioned differentiation of regimes of execution of penalties of imprisonment or other measures involving deprivation of liberty (common, open, security) is tailored to better serve the rehabilitation of the convict, but it depends on such other factors as the risks faced by inmates themselves, the safety of the community, and order and security concerns.⁷⁷

Apart from inmates placed under the security regime and from the general exclusion effected in Art. 1 (2) of Law no. 9/2020,⁷⁸ these special leave licences were not limited in their scope by the same subjective and objective limitations as those mentioned above regarding pardon and indult, which is arguably consistent with the fact that they do not carry an extinction of criminal liability and are subject to control by the authorities.⁷⁹

d) Early release

Regarding early release, it could be anticipated – provided that a leave licence (as regulated in this exceptional regime, in the terms set out above) had been granted and successfully carried out – for a period equivalent to that which the inmate would have to serve in order to reach $\frac{2}{3}$ or $\frac{5}{6}$ of the penalty (depending, respectively, on whether the penalty was higher or lower than 6 years), to a limit of up to 6 months.⁸⁰

During the early release, adding to other conditions and without detriment to the application of more favourable rules stemming from the normal regime,⁸¹ the convict would have to stay in house custody, subject

⁷⁷ See Art. 12 (1) of the Code of Enforcement.

⁷⁸ Of individuals convicted of crimes committed against members of the police or security forces, members of the armed forces and servants or guards of prison services in the exercise of their functions.

⁷⁹ See Brandão (2020a), 15 et seq., who, however, expresses the concern that assigning to the penitentiary administration the competence to grant a leave licence for a period as large as 45 days (in contrast to the maximum of three days which it is normally admitted to grant), may amount, more than to a modification in the execution of the penalty, to an actual modification of the convicting sentence, thereby raising doubts issues vis-à-vis the constitutional provision that reserves certain decisions to the judicial branch (Art. 202 of the Constitution).

⁸⁰ Art. 5 (1) and (2).

⁸¹ Art. 4 (3), Art. 62 PC and Art. 188 of the Code of Enforcement.

to surveillance by social reintegration services and the police, in terms similar to those mentioned for leave licences.⁸²

Although Law no. 9/2020 was silent on the question of whether or not the time lapsed under early release should be computed as served time (in contrast with the explicit provisions on other measures addressed above), the correct interpretation is that it should, as it constitutes an incident of execution of the penalty of imprisonment,⁸³ and in any case it would be difficult to justify the differentiation vis-à-vis special leave licences.

e) Preventive custody

Finally, this exceptional regime did not address only penalties being served, but also brought forward some measures aimed at the flexibilisation of preventive custody, a coercive measure that may be applied during the course of criminal proceedings. It was established that the requirements that must be met in order for this coercive measure to be applied should be re-examined even if the ordinary mandatory term of 3 months set out in Art. 213 of the Code of Criminal Procedure had not been reached.⁸⁴

f) General assessment

Albeit well-intentioned in tackling the special hazards that the pandemic brought to inmates and other persons involved in the penitentiary system, the legislator did not ensure sufficiently egalitarian treatment to different types of convicts. One issue consisted of a differentiation made between convicts who had already begun to serve their sentences and convicts who had not.⁸⁵ While this differentiation was, at least at an early stage, largely

⁸² Art. 4 (3).

⁸³ See Antunes (2024), 119.

⁸⁴ Art. 7 (1).

⁸⁵ Some claims of inequality were dismissed by the courts: e.g. by the High Court of Coimbra, 07 October 2020, 719/16.4TXPRT-F.C1, in www.dgsi.pt, which overturned a ruling that had applied the special regime of pardon to a convict who had not yet started to serve the sentence; see also the ruling by the same Court, 07 April 2021, 380/12.5TXCBR-B.C1. This stance corresponds to the one defended by the Consultative Council of the General-Attorney's Office, Opinion no. 10/2020, in www.ministeriopublico.pt, pp 12 et seqq. and 32 et seqq. (accessed 27 May 2025).

offset by the protraction in the start of the execution of the sentence by convicts of the latter group,⁸⁶ other differentiations remain difficult to explain, notably between individuals who were pardoned on the basis of this exceptional regime and individuals who were serving a sentence of imprisonment through the regime of house custody.⁸⁷

The regime introduced by Law no. 9/2020 remained in force long beyond the constitutional state of emergency (and even the exceptional administrative state later adopted), due to an amendment carried out by the Law no. 17/2020, of 29 May. This law disconnected the being in force of this exceptional regime from the being in force of the state of emergency. Instead, it prescribed that the exceptional regime would persist until a future law would declare otherwise. Such a law was enacted only on 15 December (Law no. 86/2021).⁸⁸ It established the cessation of Law no. 9/2020, without detriment to its applicability to already pending cases.

The exceptional regime introduced by the Law no. 9/2020 produced tangible effects upon the numbers of prison population: in 2020, a decrease of 10,9% was recorded, which has largely (though not exclusively) been attributed to this exceptional regime,⁸⁹ although by 2021 the numbers seemed to have stabilised.⁹⁰ According to Draft Laws no. 885/XIV/2 and 886/XIV/2, the exceptional regime carried the 'release' of over 1.381 inmates, 119 of which between March and June 2021, when a state of emergency was no longer in force.

5. Conclusions

The Covid-19 pandemic brought many and weighty challenges to legal systems worldwide, notably at the constitutional and the criminal law levels,

⁸⁶ Opinion no. 10/2020, *cit.*, pp. 10 et seqq. and 32, recommended public prosecutors to follow this approach, based on Art. 7 (7) (c) of Law no. 1-A/2020.

⁸⁷ See Antunes et al. (2020), 15 et seqq. See Arts. 42 (1) and 43 (1) PC.

⁸⁸ The Draft Law that was at the origin of Law no. 86/2021 (as well as Draft Law no. 885/XIV/2) had already been introduced in June 2021, and the Superior Council of Magistrates and the Superior Council of the Public Prosecution, albeit with the caveat that this issue is essentially of a criminal policy character, had both noted that the reasons underpinning the exceptional regime were no longer met: <https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailIniciativa.aspx?BID=120955> (accessed 27 May 2025).

⁸⁹ See Ishiy (2021), 153 et seqq.; see also Direção-Geral da Política de Justiça (2021), 261 et seqq.

⁹⁰ See Direção-Geral da Política de Justiça (2021), 263.

and the Portuguese legal system was no exception. The velocity of the propagation of the disease and the substantial loss of lives it brought, as well as the uncertainty as to how its effects would play out, prompted the different powers of the State to act swiftly with a view to controlling the damage as much as possible. If one adds to such factors the absence of a precedent that might have served as a reference to deal with these challenges, one must acknowledge that some of the questionable approaches taken by public authorities – or, in some cases, actual *mistakes* – are excusable. In part they resulted from gaps in national legislations that were unprepared to address public health crises with such characteristics.

An example is the absence of an offence specifically aimed at protecting public health in the event of a highly transmissible disease.⁹¹ Since designing such a criminal offence is an exercise that requires maturation, it is understandable that, as a more immediate solution, the Portuguese legislator should have looked for the offence of disobedience to ensure the efficacy of health authorities' orders of confinement and active vigilance. However, the offence of disobedience should as a principle be limited to exceptional cases, for what it ultimately protects is the State's authority as such, whereas criminal punishment should instead focus on the more substantial communitarian interests that the State is charged with protecting (in the case, public health).⁹² Another example where a hasty reaction to public concerns nearly led to over-criminalisation was 'abusive vaccination', which is already largely covered by pre-existing legislation.⁹³

In some cases, the legislator did identify the problems correctly and sought to address them, but failed in the design of the solutions thereto. For instance, albeit well-intentioned in tackling the hazards that the pandemic brought to inmates and other persons involved in the penitentiary system, it failed to treat with sufficient equality different types of convicts,⁹⁴ a goal that should not be relinquished even in times of constitutional exception. In the same vein, some approaches proposed to the issue of liability of medical staff in *triage* situations lacked in awareness of the fact that the principle of equal dignity of all persons and of equal value of all lives remain fully

⁹¹ See *supra*, § 2.2.

⁹² See *supra*, § 2.3.

⁹³ See *supra*, § 4.1.

⁹⁴ See *supra*, § 4.4.

applicable in exceptional circumstances, and, accordingly, so do the criteria by which decisions to deploy or withhold resources should abide.⁹⁵

In 8 July 2021, the Presidency of the Council of Ministers established a technical commission to study and prepare draft legislation amending the current legal framework in the light of the experience brought by the pandemic,⁹⁶ but at the time of writing no structural legislative reform was carried out – neither was a public health offence enacted.

But there are also causes for apprehension at the activity of judicial branch of the State during the pandemic. Arguably, Portuguese courts – including, and most relevantly, the Constitutional Court –, albeit with some important exceptions, were overly permissive of legislation restricting fundamental rights to an outstanding extent. At the organic level, the leeway that was granted on the Government to legislate in criminal matters without the authorisation of the Parliament was excessive.⁹⁷ At the substantive level, the principle of legality was jeopardised in both its dimension of determinability (*lex certa*) and of non-retroactivity (*lex praevia*).⁹⁸

History has shown repeatedly that exceptional political contexts fertilise the ground for overly punitive approaches and pave the way for permanent individual rights restrictions. Herein lies the importance of critical reflections on the impact of the Covid-19 pandemic upon criminal law.

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⁹⁵ See *supra*, § 3.

⁹⁶ Dispatch no. 6668/2021, of 8 July.

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Debating Rhizomatic Theory in Hospitality Management

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DOI | 10.14195/2184-9781_6_9

ABSTRACT

This paper presents a dialogical exploration between a hospitality manager and a legal linguist. It probes the applicability of Deleuze and Guattari's (1987) rhizomatic theory in Critical Management Studies (Alvesson, Bridgman and Willmott, 2009; Alvesson, 2011).

The discussion focuses on whether the rhizome, with its characteristics of non-linearity and interconnectedness, can, if at all, address the current challenges of management practices, particularly in the context of undecidabilities in hospitality law and the hospitality industry (see Barth & Barber, 2017; Green & Varburgh, 2023). The hospitality manager questions the practical benefits and potential risks of applying rhizomatic principles to hospitality management, especially concerning organisational structures, compliance and control (see Foucault, 1977 on discipline and control) as well as efficiency in times of crisis (see Giousmpasoglou, Marinakou & Zopiatis, 2021). In contrast, the legal linguist

sees potential for the rhizome to foster resilient and inclusive organisational practices by accepting non-linearity and interconnectedness, amongst other aspects. Acknowledging the theoretical merits, the hospitality manager remains sceptical of the feasibility of rhizomatic theory in relation to leadership in real-world scenarios (see Mintzberg, 1973).

This exchange provides a joint exploration of the implications of rhizomatic theory in hospitality management with a view to offering insights into the critical reflection of its implementability. Allowing both theoretical and practical perspectives, the paper extends our understanding of how, if at all, a rhizomatic conception of management can inform and potentially transform sustainable management practices in the hospitality industry.

KEYWORDS

Rhizomatic theory; hospitality law; hospitality management; Critical Management Studies; legal linguistics; undecidability; non-linearity; interconnectedness; multiplicity

This paper presents a dialogical exploration between a hospitality manager and a legal linguist. It probes the applicability of Deleuze and Guattari's (1987) rhizomatic theory in Critical Management Studies (Alvesson, Bridgman and Willmott, 2009; Alvesson, 2011). The discussion focuses on whether the rhizome, with its characteristics of non-linearity and interconnectedness, can, if at all, address the current challenges of management practices, particularly in the context of undecidabilities in hospitality law and the hospitality industry (see Barth & Barber, 2017; Green & Varburgh, 2023). The hospitality manager questions the practical benefits and potential

risks of applying rhizomatic principles to hospitality management, especially concerning organisational structures, compliance and control (see Foucault, 1977 on discipline and control) as well as efficiency in times of crisis (see Giousmpasoglou, Marinakou & Zopiatis, 2021). In contrast, the legal linguist sees potential for the rhizome to foster resilient and inclusive organisational practices by accepting non-linearity and interconnectedness, amongst other aspects. Acknowledging the theoretical merits, the hospitality manager remains sceptical of the feasibility of rhizomatic theory in relation to leadership in real-world scenarios (see Mintzberg, 1973). This exchange provides a joint exploration of the implications of rhizomatic theory in hospitality management with a view to offering insights into the critical reflection of its implementability. Allowing both theoretical and practical perspectives, the paper extends our understanding of how, if at all, a rhizomatic conception of management can inform and potentially transform sustainable management practices in the hospitality industry.

1. Introduction

Is rhizomatic theory (Deleuze and Guattari, 1987) applicable to hospitality law and management? (see Barth & Barber, 2017; Green & Varburgh, 2023) If so, how? If not, why? In addition to this, seeking to be an interdisciplinary paper, it was written with the intention to bridge theory in legal linguistics and management studies and with actual management practice (see Barth & Barber, 2017) by choosing a dialogical approach over an authoritative one. It is embedded around the area of Critical Management Studies (CMS), an approach “that questions the authority and relevance of mainstream thinking and practice. Its focus is on “management” not as a group of as a function but as a pervasive institution [...] Its concern is with the study *of*, and sometimes *against*, management” (Alvesson, Bridgman and Willmott, 2009: 1). It is dialogical because after this introduction, it takes a point – counterpoint approach between legal linguist and a hospitality leader both based in Austria, Europe. For the sake of clarity, we have chosen three critical concepts in rhizomatic theory that we found to be the cornerstones of our debate, which has unfolded since March 2023: non-linearity, interconnectedness, and multiplicity. However, before we present our arguments, we considered it necessary to introduce and engage with these concepts as

well as relate them to theory in legal linguistics and management studies. It will likely be the case that we raise more questions than we provide answers. But it is our hope that by digging into the archaeology of theory and the experience of practice, we allow for new avenues of research to open. In undertaking this dialogical exploration, we recognise a central tension in this endeavour: to what extent can a theory designed to dismantle hierarchies and prescribed categories be ‘applied’ within a field defined by them? Therefore, we engage with rhizomatic theory not as a prescriptive toolkit, but as a critical lens and, perhaps a provocation; a means to interrogate the very basis of hospitality management and law and to open space for imagining alternative relationalities, even if those alternatives might lie beyond the current horizons of ‘management’ as conventionally understood.

1.1. Non-linearity

Law and management are seemingly inherently linear systems; linear in the sense that non-linearity appears to be disruptive to the social order created and upheld in legal and management discourse (see Parker, 2002 on managerialism as an ideology). Does a courtroom not have its judge and a hotel its general manager; do other social roles not have to adapt according to the hierarchy inscribed into the very nature of what seems to be a vertical, top-down social system? In other words, the treelike hierarchy found in many professional contexts in law as well as in hotel management seems to be a fixed variable, something that is not to be questioned (see Foucault, 1980 on power/knowledge; see also Bourdieu, 1986; Burrell & Morgan, 1979). So, when Deleuze and Guattari (1987) describe the rhizome as a network lacking a fixed starting point or central hierarchy, they challenge this perceived naturalness of linearity and, instead, propose an alternative, that of non-linearity. We do not disagree that it is indeed thought-provoking to apply the notion of non-linearity to hospitality law and management (see Green & Varburgh, 2023). However, as we will discuss below, there might be potential (non-)linearities operative in legal and hospitality contexts that might have been overlooked or simply not conceived as such (see also Burrell & Morgan, 1979). We certainly disagree on the point that there is such a thing as a bright-line rule of either linearity or non-linearity in management systems, as the challenges of undecidabilities in hospitality law

and the hospitality industry may reveal (see Barth & Barber, 2017; Green & Varburgh, 2023). Deciding means siding and reproducing social hierarchies. And, if there is a decision-maker, such as a judge or a general manager, there is likely linearity. Or, as the discussion might show (un)convincingly, there is more non-linearity in the social system we, perhaps baselessly, anticipate being the most regulated and thus most linear of them all, with(out) a clear beginning or clear end. Our discussion in the section on non-linearity revolves around this central question: Can embracing non-linearity provide a deeper understanding of the salient undecidabilities in hospitality law and the hospitality industry, or does it risk exacerbating confusion in theory and practice?

1.2. Interconnectedness

Interconnectedness is about the relationality within social systems. It assumes that there is no such thing as an element in isolation, be it in hospitality law or in management (Green & Varburgh, 2023). Deleuze and Guattari (1987) essentially propose a network where all elements are equally significant and connectable, which may be perceived as disruptive for the social structure we find in hospitality law and management. This is because (hospitality) law has developed its own rules of interconnectability of meanings and social roles, so it seems there is an intrinsic disconnect between the law as a social system and the idea of interconnectedness of concepts and agents. Similarly, in management, interconnectedness as relationality and all-connectedness appears disruptive in the sense that, conventionally (see Mintzberg, 1973), leadership is seen as embedded in clear organisational boundaries of meanings connectable and unconnectable (see Mautner, 2017; for business communication insights see Green, 2025b). Envisaging a social system in hospitality law and management that is void of the rules of connectability is indeed a valuable point of discussion, and we disagree on the applicability of rhizomatic theory in this regard.

1.3. Multiplicity

Deleuze and Guattari (1987) argue that a rhizome operates through multiplicities in the sense that, instead of a binary way of thinking, there may be multiple possibilities to the legal or managerial decision at hand. In other words, the Manichean principle of light versus darkness is replaced by the potential for there being a whole continuum of greys and the indeterminacy, as well as the multicomponentiality of cognitive outcomes in relation to legal and managerial decision-making. We disagree on the applicability of rhizomatic theory and propose two different perspectives on the multiplicities potentially acceptable in hospitality law as a normative pool of knowledge on the one hand and the organisational and managerial lived experience on the other. The notion of applicability lends itself to demonstrating how legal and managerial perspectives may diverge. Lawyers tend to focus on the question of whether and how a specific legal concept may apply and what the legal implications of applying the concept may be. Managers are not concerned with this applicability binary but instead tend to solve a problem by considering practical implications, efficiency, and the broader hospitality context. They focus on finding solutions that align with business goals, operational realities, and customer needs, which is why they also tend to take a more flexible approach than legal professionals would. Our amicable disagreement regarding the (in)applicability of rhizomatic theory to law and hospitality management is found at the intersection of whether or not there is a unifying element in law generally and hospitality law specifically (Green & Varburgh, 2023); and, by extension, whether management is thinkable without this ordering force of such a unifying element. The idea of multiplicity may well resonate with critical legal linguists due to the ubiquity of indeterminacies in language and communication (see Green, 2025a). However, hospitality managers are likely to take a different approach, calling for some form of coherence and order that they perceive as indispensable for the execution of managerial functions in hospitality.

2. The Controversy

In the following section we present the controversy surrounding the (in)applicability of rhizomatic theory to hospitality law and management

(Barth & Barber, 2017; Green & Varburgh, 2023). We chose to structure it as a dialogical exchange between two diverging perspectives on *what if*, rather than an authoritative stance on *how to*. In doing so, we hope to contribute to enhancing analytical depth by presenting the controversy rather than prefabricated solutions. Making this paper a discussion is also much closer to the reality of composing it, that is, it started as a quarrel on the (in)applicability of theory to practice in legal and management contexts (Barth & Barber, 2017). Of course, it would be easier to present only the outcomes, as is often done, but this overlooks the process, the trajectories of gaining deeper knowledge. However, we have also decided to adopt this dialogical format because it allows readers to see how scholars and practitioners, though they might fiercely disagree with one another, can meet and part amicably in a debate. Those reading the discussion might benefit from being able to move between the arguments and counterarguments, the evaluation of which is left entirely to the reader. Finally, all academic discourse is a great conversation (see Warnke & Spitzmüller, 2011). By becoming part of this conversation, we engage in a range of speech acts—*asserting, questioning, assuming, presenting, contesting, synthesising, and proposing*. Academic discourse has its ebbs and flows, and by disagreeing, by making explicit the lines of disagreement in understanding theory and practice, we hope to make a contribution to the value of controversy in its own right. At the heart of all of this lies the intention *to learn and to reflect* critically on the relationship between hospitality law, rhizomatic theory, and (critical) management studies (see Clegg, Kornberger & Rhodes, 2005). As we are discussing the questions at hand we are aware that a hospitality manager and a legal linguist might translate rhizomatic principles into their thinking differently, especially in terms of how different actors (e.g., managers, staff, customers) negotiate, adapt, resist or implement organisational change (see also Hardy & Maguire, 2008; Latour, 2005). If readers disagree with the points or counterpoints we make, we explicitly encourage them to respond, if they wish to do so.

2.1. Opening argument in favour of Rhizomatic Theory

To begin with, I would like to say that Rhizomatic theory is an invitation, an invitation to move beyond the conventional ways of understanding

social systems as rigid, top-down, hierarchical, prescriptive structures (see Czarniawska, 1997 on organisational identity). It is also a leap that takes intellectual courage, because it allows us to think the unthinkable, to make connections where authority tells you that there are none. But is it not the intrinsic quality of interpretation, the discursive practice of meaning-making that allows for that leap, to see a social system as something dynamic, as something that evolves and that is discursively constituted by and constitutive of discursive interactions? It is where this system, taken for granted and unreflectively adopted, no longer provides the comfort of absolutes that those daring to interpret, to resist the absolute, to challenge the status quo, become troublemakers disrupting the comfort zone of thinking and doing it all like it has been done before. However, social systems in hospitality law and management are more complex than that (Barth & Barber, 2017; Green & Varburgh, 2023). There are many reasons why this may be the case. First and foremost, these seem to be heavily regulated spaces that do not allow for much intellectual disruption, which Rhizomatic theory likely is. Hospitality law decrees: the manager obeys. So, what is the fuss about non-linearity, interconnectedness, and multiplicity? The fuss is about undecidabilities, the observation that at times, be it as lawyers, legal linguists, or managers, we face the challenge of undecidabilities.

2.1.1. Undecidabilities in hospitality law

Deciding means siding. At times lawyers and managers alike face undecidabilities because of indeterminacy in hospitality law. The sources of such indeterminacy are diverse and context-dependent; they include, but are not limited to, linguistic phenomena, e.g., the continuum of (in)determinacy in and around textual features in normative texts produced to regulate the hospitality industry. Undecidabilities in hospitality law can emerge in relation to practical questions of implementation, and this is likely one of the first associations coming to mind. However, the concept of undecidability and the many potential contexts of undecidabilities in and around hospitality law are not only linked to abstract legal norms but also to managerial practices and cultural diversity. As I know that my discussant is a hospitality leader, I will choose examples from the hotel industry to illustrate my point that undecidabilities, *inter alia*, originate from interpretative variability in

and around normative texts, but also from the practical contexts in which hospitality law is applied by lawyers and managers. I say *applied*, not *applicable*. If I were to describe a certain normative text as (in)applicable, I would already uncritically buy into the binary of giving weight to one particular set of legal norms over another without scrutinising the choice made. It rather seems to be a question of centre and periphery. Some normative texts are simply considered more part of the centre; others are more likely regarded as belonging to the periphery. Undecidabilities in law and in management can be identified by asking the question as to whether the issue raised resists resolution into binary outcomes. Take, for instance the legal standards of reasonability, sufficiency, and safety. Of course, there is linguistic indeterminacy in the sense that what is *reasonable*, or *sufficient*, or *safe* in the context of hospitality management is not self-explanatory but largely context-dependent (Barth & Barber, 2017). In the globalised world of today, cultural diversity plays an important role, which also has a profound impact on the interpretability of both hospitality law and management. For instance, food and safety regulations in an Israeli hotel may differ from those in Riad, which might again differ from those in Helsinki. So, speaking of hospitality law around the globe in a way entails acknowledging a whole spectrum of possible interpretations of one and the same phenomenon than one definitive legal outcome. This, in turn, forces decision-makers in law and management to engage with the ubiquitous non-linearity of hospitality law around the globe, which at the same time is very much interconnected in a plethora of ways. This non-linearity and interconnectedness likely leads to multiplicity in the sense that those working in international hospitality law or head an entire area of hotels as a cluster managers cannot give a straight answer but need to resort to an *it depends* (see Yu, 1999). This is why Critical Management Studies would benefit from a legal linguistically and jurilinguistically informed perspective (see also the contributions in Wagner & Matulewska, 2023) on Rhizomatic Theory the case for which I will make in relation to the non-linearity of decision-making, the interconnectedness of cultures and the practicality of multiplicity.

2.1.2. The non-linearity of decision-making

Decision-making in hospitality law and management is rarely a straight path, nor does it follow a straightforward algorithm. Instead, it is constructed and shaped by an entire web of contingencies, disruptions, and competing priorities. For instance, consider the interplay between sustainability goals and the notion of profitability in the hospitality industry. A hotel may aim to reduce its environmental footprint by sourcing local and organic food for its restaurant, but such an initiative might at the same time conflict with cost constraints or supply chain reliability. The law only decrees, it does not explain, nor does it teach to do the right thing. So, when hospitality managers work in their respective areas of responsibility, which may range from a small reception in New Delhi to an entire hotel cluster in Las Vegas (as of 2025, 150,000 hotel rooms), they quickly find themselves caught between multiple plausible answers. So, rhizomatic thinking in a way has the potential to enable hospitality lawyers and hospitality managers to critically reflect on their own identity as decision-makers, as well as the non-linearity of the decision process. This takes a leap of courage, because it also means letting go of the comfort zone of doing law and management as it has always been done, but the potential for transforming both lawyering and managing in the global hospitality industry is immense. After all, the hospitality industry is about the management of hospitality as a value but also as a service.

2.1.3. The interconnectedness of decision-making

Hotel management tends to be perceived as a highly regulated domain with rigid hierarchies and clear rules about which elements can, should, or must be connected. After all, there are legal norms that a hotel needs to live up to, clear operational roles and responsibilities, and, finally, a clear organisational structure that reflects the aim of monetising hospitality. Thinking hospitality law and management rhizomatically may mean taking a relational approach towards the interconnectivity of legal, operational, and organisation elements, *inter alia*. This interconnected and relational approach to the legal rules operative and the execution of managerial responsibilities has, of course, disruptive potential, because it breaks through

entrenched structures and reflects the messiness of both lawyering and language in the hospitality industry more realistically. Rhizomatic theory, to some, may be nothing but a thought experiment, a disruption to the comfortable status quo, but there are other ways of approaching it, ways that do not foreground the fear of undermining entrenched structures that have always been there. In fact, the interconnectedness of decision-making in hospitality law and in management seems to reveal the interconnectedness of the hospitality industry as a discursive space that may seem homogenous because it strives for efficiency when in fact the process of deciding and the decision as a result is far from a one-way street connecting A and B, not leaving room for C, D, E, F and or G. The hospitality lawyer may face such interconnectivity challenges in many contexts, such as advising on cross-border privacy compliance (e.g., GDPR) or when negotiating or drafting a contract. In comparison, the hospitality manager needs to implement the web of interactions between the normative imperatives of the law and the various operational realities encountered when running the hotel.

2.1.4. The multiplicity of decision-making

Previously, I have argued that rhizomatic thinking embraces complexity rather than attempting to simplify or ignore it. This is particularly visible when engaging with what I argue to be the multiplicity of decision-making in hospitality law and management. Multiplicity may be found both in hospitality and in hospitality management, since any decision-making process in a social system is likely one that features multiplicity. However, the domains of hospitality law and hospitality management are by no means clearly separable entities. After all, as Barth and Barber eloquently argue, “[i]n the day-to-day operation of a hospitality facility, it is the manager, not the company attorney who will most influence the legal position of the operation.” In other words, there is a multiplicity of legal and managerial decision points. How much guest and employee data can legally be collected? And, how can the data enhance guest experience without breaching any privacy norms? How does the hotel implement safety measures during a pandemic responsibly, whilst maintaining operational continuity as much as possible? Yes, I argue for the multiplicity of decision-making in law and

in management and for the multiplicity of decisions. There likely is a chain of decisions in the making, decisions made and decisions to be made and, in my interpretation of Deleuze and Guattari's (1987) work, it is where hospitality managers and legal teams juggle potentially conflicting priorities where things get interesting (see Handford & Köster, 2019 on conflict and communication). What is the alternative if we were to follow the Manichean bright-line binary without any shades of grey? The alternative really would be the illusion that decision-making becomes rigid, isolated, and singular. Needless to say that such a conception of hospitality law or management may cause significantly more chaos, particularly in times of crises which require a flexible, context-sensitive, and innovative approach, than if one accepts the possibility that decision-making in both law and management may be less linear, less isolated and less singular than expected.

2.1.5. My questions to the hospitality manager

In my opening statement, I have made several points, of which I will restate the three most salient ones and will add what I perceive to be critical questions for the hospitality manager.

Firstly, I have argued that the decision-making process in hospitality law and management is often not as straightforward or hierarchical as we may imagine. Rather, it may be the case that it is shaped by a web of competing priorities and contingencies. I conclude that non-linearity may provide insights into the undecidabilities faced by professionals in these fields. My question is, how do you manage situations in a hotel where there is no clear path forward, where there seems to be an entangled network of partly or fully conflicting interests? Would the experiment of non-linear thinking in your decision-making process help you deal with such challenging situations more effectively?

Secondly, I argued that hospitality law and management are highly relational systems, where legal norms, operational roles, and organisational structures are interconnected. I conclude that applying rhizomatic thinking to this relationality allows for a deeper understanding of these interconnections because it acknowledges the messy process of decision-making in hospitality (Green & Varburgh, 2023). How do you deal with the many connections between legal, operational, and organisational aspects in management?

Would breaking down these silos improve the decision-making process in a hotel, or would it disrupt the status quo? (see Peters & Blee, 2020)

Thirdly, I argue that decision-making in hospitality law and management may involve a whole bundle of potential variables and outcomes. This may lead to very multi-faceted decisions. I conclude that rhizomatic theory challenges the binary thinking and allows for embracing the multiplicity of decision-making (the process) and the multiplicity of decisions (the result). In your experience, how often do you face situations where there are multiple potential outcomes or solutions to a problem? And, how do you manage competing priorities when it seems there is no singular right answer, when there is undecidability?

2.2. Opening argument against Rhizomatic Theory

2.2.1. Being a Host in a Hotel

means accepting and acting upon the clear roles one finds in the structure of the industry. I welcome this opportunity to contribute to the discussion. Much of what I am going to argue might likely give the impression that I seek to refute Rhizomatic Theory altogether. After all, I am a practitioner, one of the around 400 Front Office Managers (FoM) in Vienna, Austria, responsible for a medium-sized hotel that provides 305 rooms. The hotel has a team of approximately 75 staff members, and my role as the FoM feels like being the “spider in the web” —someone who is responsible for coordinating, overseeing, and handling daily management challenges (Barth & Barber, 2017). I say challenges, because day to day, I solve practical problems in the hospitality world that have to do with human interaction in the broadest sense. I manage all front desk operations and I am responsible for maintaining the highest standards of guest service, which includes supervision over the check-in and check-out process, and the handling of group and individual reservations. I am not a lone wolf. I work closely with other hotel departments, such as housekeeping, food and beverage, and maintenance, among others, because for guest needs to be met, team members need to know their role and what is expected of them. In addition, I should ensure guest satisfaction, resolve complaints, and address a great many special requests, all the while making sure the guest feels at home. In other

words, while I appreciate the intellectual stimulation that Rhizomatic Theory provides, I argue that it may not be applicable to hotel management, where clarity, order, and precision are what really matters (Barth & Barber, 2017). Similarly, given the growing number of rules and regulations in hospitality law we are currently facing in the industry, I must say that I appreciate the straightforward manner in which Austrian hospitality law is applied and even though there might be some instances where I spot a loophole of some sort, I couldn't say I feel that Rhizomatics would contribute much to making our lives easier as hospitality professionals in a world that seems to consist of a flood of legal provisions.

2.2.2. The Linearity of Hospitality (Law and) Management

The hospitality industry is overall a predictable and unambiguous space. It does not *need* structure or efficiency, it is built on it (e.g., see Clifton, 2021 on security). Depending on the level of management (e.g., senior management, middle management, supervisor level, etc.), one faces different tasks that need to be executed in a specific way, often according to clear corporate standards. For instance, managing front desk operations typically requires serving guests efficiently and consistently and, as much as I am critical about the influx of rules and regulations, I cannot say that everything that happens on the different levels of management is not in some way or another linked to hospitality law and corporate identity. Standard operating procedures should reflect legal requirements, but the crucial point is that they need to be followed through in a clear and consistent manner. So, it is not simply about delivering good service to guests; it is about meeting specific, often standardised sets of rules, which ensure that operations comply with both external legal regulations and internal policies. For instance, during check-ins in pandemic times, front desk staff may need to verify that guests have completed certain health screenings or filled in contact tracing forms, or that, generally speaking, certain hygiene protocols are met. One could even go as far as arguing that being consistent in times of crises means acting ethically (see Giousmpasoglou, Marinakou, & Zopiatis, 2021). So, a practical implementation of Deleuze and Guattari's (1987) idea of non-linearity, though thought-provoking, is barely an option for the hospitality industry, simply because it is the very foundation of that industry

to deliver predictable and consistent outcomes. In other words, both hospitality professionals and guests should be able to manoeuvre through every hotel in the world and know what to expect. This is why hospitality practice and management specifically is the implementation of linearity par excellence. Of course, I expect nothing less from legal linguists (see Vogel, 2019 (and jurilinguists to challenge my views, which are, in essence, derived from actual hospitality practice. But, I cannot imagine real-world solutions to be derived from Rhizomatic theory, at least not in the case of hospitality management.

2.2.3, Autonomy and segmentation of Hospitality (Law and) Management

Deleuze and Guattari's (1987) concept of interconnectedness is a fascinating one in many ways, and, in hospitality practice, there may be many interconnected elements, particularly in relation to strategy, i.e., questions of implementing hospitality law and related provisions. However, when it comes to lived practice, the focus really is not on interconnectedness but on autonomy of responsibilities and segmentation of departments. It simply would not work otherwise. By this, I mean that whilst interconnectedness may be an appealing theoretical framework, in the practical reality of hospitality operations, it would likely lead to a breakdown of operations. This is because each department operates within a very clearly defined scope of responsibilities. Tasks should be executed efficiently, without unnecessary overlap, and connecting the unconnected might be of intellectual interest, but lacks practical necessity. For example, the housekeeping department focuses on room cleanliness and readiness. In contrast, the front office prioritises guest check-ins, check-outs, and service interactions. Of course, there are connections between the Front Office and Housekeeping. However, these directions remain a top-down connection; there is a clear hierarchy between departments, and that hierarchy allows the system to function. Ultimately, a forceful attempt to interconnect these roles could potentially disrupt workflows, dilute accountability, and compromise the quality of service. I thus find segmentation of departments and autonomy to be not just practical necessities but fundamentals that ensure the functioning of hospitality management. Interconnectedness suggests a web of

interrelation, but the reality in a hotel is the clear segmentation of roles and tasks. Different departments, such as housekeeping, food and beverage, or front office, operate largely independently, and it is only when multidepartmental challenges arise that there is an increased need for collaboration. Departments are typically autonomous and structured hierarchically, and this is an important prerequisite for accountability that comes with the hierarchical structure of any business organisation. The issue I take with the idea of interconnectedness is that it might blur the boundaries of responsibility and accountability. And, this also ties in with the concept of multiplicity, which is thought-provoking but lacks direction to apply it to hospitality practice, as I will elaborate on in the section below.

2.2.4. Multiplicity in Hospitality (Law and) Management?

The idea of multiplicity is incompatible with the heavily structured reality of hospitality management and the implementation of hospitality law. It implies a plethora of equally valid pathways and multipolar decision-making, as well as the existence of overlapping priorities. However, in hospitality practice, such a framework lacks the clarity required to uphold order, efficiency, and consistency of processes. In hospitality management, decision-making is not a free-form process where multiple options are endlessly weighed without resolution (see Barth & Barber, 2017). It is a clear-cut process that is defined by legal provisions, policies, and corporate standards. For example, the decision to allocate rooms, adjust staffing levels, or implement health and safety protocols is guided by established procedures, leaving little room for multiplicity. Introducing multiplicity thus entails that managers and teams are unable to align on a unified course of action necessary to live up to expectations set by hospitality law, policy, and corporate standards. Hospitality law is designed to ensure compliance, accountability, and predictability—three qualities that not only ensure the smooth but also the safe functioning of a hotel. Fluid and overlapping interpretations of legal provisions or management orders would achieve nothing but undermining the established social and organisational structures that make the building of a hotel. As touched upon, multiplicity in the implementation of legal provisions and management would soon become a Pandora's box full of challenges to responsibility and accountability in

management. In contrast, hierarchical and segmented systems, with a clear delineation of roles and responsibilities, foster accountability and streamline implementation and decision-making. I should say that, as much as I find the concept inapplicable to hospitality practice, it is a fascinating one, providing ample food for thought. Rigid social systems need to be challenged; hospitality employees have a challenging life. They grapple with long working hours, low wages, precarious job security, and high physical and emotional demands. This is why responsibility and accountability are critical aspects in implementing hospitality law and in making decisions in hospitality management. The structured composition of the industry is at odds with the open-ended and non-linear concept of multiplicity.

2.2.5. My questions to the legal linguist

In my opening statement, it was my attempt to capture three main arguments why Rhizomatic Theory might face difficulties in implementation in both hospitality law and management.

Firstly, I argue that hospitality management relies on and requires clear roles and structures that are fundamental to its operationality. As a Front Office Manager, I oversee a medium-sized hotel's operations, ensuring coordination among departments and compliance with legal as well as corporate standards. This structured approach is required for predictable and consistent outcomes. It ensures not only compliance with hospitality law but also guest satisfaction and overall smooth operations. The focus on non-linearity thus seems ill-suited for a management performance that is measured against the standards of clarity, order, and consistency. Whilst I am sure that Rhizomatic Theory is of great value in philosophy, I wonder how non-linearity can, if at all, address the *practical* needs of the hospitality industry?

Secondly, I argue that segmentation of responsibilities and the autonomy of departments are important for maintaining efficiency and accountability in hospitality management. Each department, such as housekeeping or front office, among many others, operates within a clearly defined scope, and the hierarchies between them ensure the much-needed clarity in roles and responsibilities. While interconnectedness may offer theoretical insights, in practice, it may risk disrupting workflows, diluting accountability, and compromising overall service quality. Given these profound challenges,

can Rhizomatic Theory offer a practical solution for the autonomy required in hospitality operations?

Thirdly, I argue that the idea of multiplicity clashes with the structured and linear decision-making processes in hospitality management (see Green & Varburgh, 2023). Decision-making at the various management levels is based on legal provisions and should at least be within earshot of the law (see Barth & Barber, 2017). But, there are also corporate policies and established standards that may be hotel-specific and that have to be consistently put into practice. In doing so, hospitality managers ensure compliance and predictability of outcomes. Thus, as thought-provoking multiplicity as a concept is, overlapping priorities and non-linear pathways would likely undermine the accountability and clarity that are essential to responsible hospitality management (see Barth & Barber, 2017). I wonder whether there is a way to reconcile the theoretical appeal of multiplicity with the realities of hospitality practice, or whether multiplicity is simply inapplicable to the managerial reality of a hotel.

2.3. Rebuttal and counterargument to Januš Chaim Varburgh

2.3.1. I beg to differ

I appreciate the opportunity to respond to the eloquent points made by Januš Chaim Varburgh, who, as I expected, focuses on the practical argument of perceived inapplicability of Rhizomatic theory. I take issue with the idea that theory needs to live up to the practitioner's absolute standard of applicability. This is because the binary between the applicable and the inapplicable is quite Manichean in the sense that there is an achievable standard of applicability that is defined either by the practitioner or by the theoretician. All those who question social structure, which Rhizomatic thinking clearly does, would be refuted on the grounds of an undefined standard of inapplicability. This is, of course, problematic for various reasons I will argue below.

As an applied legal linguist, who, amongst other legal areas, deals with hospitality law, I wonder whether it is not the case that theory *and* practice can benefit from thought experimentation. One such experiment is seeing hospitality law and practice through the lens of the Rhizome. Particularly,

in cases where there does not seem to be a clear-cut solution, a bright-line rule, it is the courage to purposefully forget all we know and do at legal knowledge manufactories like law schools and hospitality schools. To challenge systems of knowledge is as challenging as calling into question the entrenched pathways of practice. It is uncomfortable to leave the paths of what has been thought or done before. So, the real contribution Rhizomatic theory can make to discussions in law and hospitality management is that of allowing non-conformism in thinking and decision-making.

In hospitality law, Rhizomatic thinking allows us to question legal language use, the agents selecting and filtering legal meaning and the discourses operative in practice in a plethora of legal contexts, such as contracts, employee relations, liability, guest safety, insurance, and regulatory compliance, to name but a few (see also Derrida, 1992 on the force of law). These areas can be examined through the lens of legal theory and rhizomatic concepts, which might enable us to develop a deeper understanding of how hospitality law adapts in response to shifting legal, economic, and social conditions. It provides us with opportunities to scrutinise business structures in hospitality, responsibilities towards both staff and guests, or the management of risks in the industry, be it at the organisational, legal, or operational level of hospitality management (Barth & Barber, 2017). This is why it requires a critical perspective on both hospitality law and hospitality management, and Rhizomatic thinking allows for just that: the courage to tear down the seemingly given structures of the system rather than merely reproducing them. To illustrate this point, I will discuss and relate my seven points of consideration to Varburgh's counterarguments. I seek to show how Rhizomatic Theory can provide a valuable perspective on hospitality law and management.

2.3.2. Counter Argument 1: Challenging the Structure of Hospitality Law and Management

The rigid and hierarchical structure of hospitality management is a direct consequence of unreflective conformism. Instead, I propose to use Rhizomatic thinking to lay bare the hidden potential of efficiency by detecting the flexible connections between organisational units and people rather than the enforcement of strict boundaries. Rhizomatic thinking

does not suggest a complete abandonment of structure, but it encourages creativity and responsiveness to change. Many creative solutions to legal issues or practical challenges in management may originate from Rhizomatic thinking by combining the seemingly non-combinable without labelling it as such. I maintain that Rhizomatic thinking has great potential in both challenging and changing organisational and operational structure in connecting and disconnecting organisational entities and functions that have been taken for granted (see Peters & Blee, 2020) Rapidly changing legal requirements or unexpected guest requests are suitable examples that have great practical value, which is why Rhizomatic thinking should have its place in hospitality law and (critical) management studies.

2.3.3. Counter Argument 2: Legal Language and the Rhizome in Hospitality Law

As I have said, hospitality management tends to be driven by firm hierarchies and strong structures. There seem to be those that *can* command and those that *must* obey, and not infrequently, the social structure is argued to be a practical and/or legal necessity. But this is an illusion. My second counterargument is that Rhizomatic thinking allows us to look behind the entrenched pathway of interpreting hospitality law by opening it up to an interpretation that is sensitive to the many faces of indeterminacy that surround the hospitality lawyer and directly impact the hospitality manager. Hospitality law is likely perceived by practitioners in hospitality management as a rigid and inflexible normative system, and it is indeed my impression from Austrian Hospitality Law that this is the case. However, this perceived rigidity does not come from the law but from the permissible methods of interpretation. Rhizomatic thinking allows for indecidability to emerge and accepts that there may indeed not be one right, proper, correct, dogmatic, orthodox solution to a specific case, but that instead there is the possibility of multiple interpretations and pathways, that it might be necessary to open more than one door. Thinking (hospitality) law through the Rhizome is brave, because it means to at least agree that there might be a possibility that the application of a legal concept in hospitality law, such as hotel liability, labour law or consumer protection, is not a one-way street but has multiple connections and intersections.

Paradoxically, in Austria, many areas of law are labelled as cross-cutting matters (*Querschnittsmaterien*). This suggests that they span multiple domains and are indeed open to various contextual and situational interpretations by the multicontextuality they feature. However, the boundaries of what can or cannot be contextualised often seem predetermined by doctrine, which reveals that the supposed flexibility of these areas is, in fact, constrained by established legal dogma.

2.3.4. Counter Argument 3: The Interconnectedness of Practice

Varburgh emphasises segmentation, and I agree that it is reasonable to assume the construction of organisational units in hospitality management. However, at the end of the day, managing departments in hospitality, or indeed the criminal justice system, means managing people. By this, I mean that the Rhizomatic concept of interconnectedness can be utilised to map the lines not only between organisational units but also between hospitality professionals and their skills. It is when undecidabilities in managerial decision-making emerge that rigid departmental boundaries or unshakable function titles could potentially even lead to less collaboration or communication (see de Cillia, Gruber & Spitzmüller, 2020). The ability for staff across different departments to collaborate, share expertise, and respond rapidly to unforeseen challenges is not only of theoretical value but a practical necessity in times of uncertainty, e.g., natural disasters, pandemics, etc. I thus maintain that interconnected ways of thinking can lead to more effective synergies between organisational units and people. I would call into question the idea that interconnected thinking would lead to flaws in implementing policy. It is more likely the case that daring to connect the seemingly unconnectable lays bare gaps in legal compliance where departments intersect.

2.3.5. Counter Argument 4: Multiplicity in Decision-Making

Varburgh argues that hospitality decision-making follows a hierarchical step-by-step process dictated by legal regulations, corporate policies, and industry standards. But this linear approach may restrict the degree to which a hospitality manager can find creative and adaptable solutions,

especially in unpredictable situations where rigid decision pathways cannot effectively address emerging challenges. The potential of multiplicity is to open up decision-making to a variety of perspectives, allowing hospitality managers to consider different solutions. Multiplicity can provide managers with the flexibility to overcome seemingly insurmountable challenges resulting from new legal requirements, operational challenges, or customer expectations. This does not necessarily mean that consistency should be abandoned, in principle, but that one accepts the possibility of decision-making materialising in multiple pathways that allow both the hospitality lawyer and the hospitality manager to respond dynamically to the unforeseen. At times, the decision-making process might simply fall short if alternative perspectives or approaches are not explored, because they fall victim to the logic of the system. So, through/with multiplicity in decision-making, managers are encouraged to engage with situations in a multiperspectival manner, which recognises that standard procedures may not always be sufficient. This is particularly relevant in today's multicultural, multilingual, and multitechnological world, where exploring multiple avenues can lead to more effective solutions, especially in increasingly complex or unpredictable scenarios that are in need of constant reform.

2.3.6. Counter Argument 5: Bridging Theory, Practice, and Innovation

Varburgh's critique regarding the divide between theory and practice is relevant to the processes of knowledge production at law schools and hospitality management schools. Rhizomatic thinking can make a substantial contribution to overcome this divide by sparking innovative ways of conceiving of previously unconceived connections between theory and industry. Critical applied legal linguistics and critical management studies may provide a theoretical basis through the lens of the Rhizome to identify the multiverses of connections potentially emerging and, in doing so, allowing for more creative strategies to develop in legal and managerial education and decision-making. Rhizomatic thinking, much like the Big Bang, can generate an expansive explosion of interconnected ideas that may disrupt but in the long run improve established legal and organisational networks and give rise to an infinite web of possibilities for reimagining

legal and managerial landscapes. From the perspective of a hospitality manager this is not only a new perspective on the connections between theory and practice but a new way of conceiving and of performing hospitality management. This, in turn, may have other positive effects by allowing for non-linearity, interconnectedness and multiplicity, inter alia, in the setting, interpretation and application of norms in management. This leads me to consider in detail the counter argument of legal compliance and adaptivity.

2.3.7. Counter Argument +: Legal compliance, adaptivity, and ethics

Varburgh's argument that rhizomatic thinking is inherently impractical due to the necessity for legal compliance in hospitality operations overlooks the potential for Rhizomatic thinking to provide a multi-level understanding of how hospitality law itself is changing and reshaping the industry. Statutory interpretation is a discursive practice and requires an ability to adapt to shifting conditions—hospitality managers and legal professionals are unlikely to see hospitality law as a static, linear set of rules, but may be able to adopt more fluid interpretations that allow for legally compliant solutions and effective responses to 21st-century challenges. Undecidabilities may arise at the intersection of law and ethics, where a solution may well be legal but feel very wrong for the hospitality lawyer and/or the manager. For instance, consider overbooking policies. Legally, a hotel may have the right to overbook rooms to compensate for no-shows and cancellations. However, when all guests arrive, the manager faces an ethical dilemma of choosing some guests over others. Rhizomatic thinking can benefit both the hospitality lawyer advising on the policy and the manager implementing it by helping them explore interconnected pathways that are mindful of legal compliance, ethical considerations, as well as guest satisfaction.

2.3.8. Counter Argument 7: Challenging Norms in Hospitality Management

Varburgh emphasises the factual rigidity and predictability of hospitality management, but he overlooks the fact that many of the challenges in the

industry require a certain degree of flexibility. What Rhizomatic thinking can do for hospitality lawyers and managers alike is to help them to think beyond, perhaps even unthink, insufficient legal doctrine or standard solutions in management. This way, ingrained legal and managerial structures—be it at the level of policy-making, operational workflows, or conflict resolution in the context of colliding interests—can be critically examined and reimagined. For example, consider the hospitality industry’s labour-related challenges, such as long working hours, unpredictable shifts, and heavy workloads, which ultimately lead to significant strain on employees. Vulnerable groups, such as disabled workers, often face additional barriers, including unequal pay, limited leadership opportunities, and inadequate workplace accommodations. A rhizomatic way of thinking could help identify and address such issues by fostering more interconnected and adaptive strategies that balance operational demands with ethical labour practices. Rhizomatic thinking is innovative thinking. It may open a plethora of doors that address diversity, technological cha(lle)nges, or the sudden need to respond to an unforeseen crisis (see Green & Varburgh, 2025; Giousmpasoglou, Marinakou, & Zopiatis, 2021). In doing so, it might likely transform hospitality law and hospitality management in ways unimaginable at this point if it given a chance to move the entrenched pathways.

2.3.9. In a nutshell, what I am trying to say

is that Rhizomatic thinking is “possibility thinking” (Craft & Chappell, 2014). It offers a transformative lens through which the intersection of hospitality law and management can be reimagined. Optimisation is often described as a key interest for industry professionals, but it is only one of the many potential benefits that come with adopting this (self-)reflective stance. Rhizomatic thinking provides a valuable perspective for reimagining hospitality law and management by fostering flexibility and creativity through unexplored or underexplored connections. It challenges hierarchical social and communicative structures and has the potential to lead both legal professionals and hospitality managers to embrace multiplicity and adaptability in decision-making. Rhizomatic thinking is far from being impractical. It offers a means of addressing the complexities of the industry—such as legal compliance, ethical considerations, and organisational

challenges—dynamically and responsively. It promotes innovation and opens the door to a multifaceted approach that is mindful and considers in depth the diversity in perspective and may potentially even lead to breakthroughs in both legal practice and management strategies by imagining hospitality law and management as though it has never been imagined before.

2.4. Rebuttal and counterargument to Daniel H. Green

2.4.1. Rhizomatic Theory may be applicable, but it is not implementable

I see why Rhizomatic theory may be appealing as an ideal model of the potential for both complexity and fluidity. But, I maintain that, while it may be applicable to hospitality law and management, it is not implementable. This is because the hierarchical systems one encounters in industries make a generalisable idea of non-linearity simply impossible to achieve. In a way, the hospitality industry specifically has made clarity in authority lines and standardisation of operating procedures the centre of its entrepreneurial activity with a view to achieving predictability in outcomes. Of course, decentralising hospitality management is a thought-provoking idea, but it would require a complete change in established structures as well as leadership mindsets. Organisational change is slow, which is why gradual implementation of Rhizomatic thinking would likely lead to outcomes being non-Rhizomatic at all, but rather flawed compromises that would no longer do justice to the ideas originally intended and discussed in this paper. In this section, I would like to point out the salient features of why Rhizomatic theory may be applicable in the sense that the ideas are indeed worth considering from a reflective point of view. I agree that some of the concepts have the potential to change *the way we do* hospitality in organisations, e.g., hotels, spas, etc., because it allows us as hospitality professionals to think deeply into the relationship of theory and practice, but also into the relationship of the normative and the performed. What hospitality managers should do is largely dictated by hospitality law and by the extent to which these normative imperatives are implemented in daily professional practice. Rhizomatic theory might likely be the most paradoxical attempt to bridge theory and

practice, because it does away with the ingrained pathways of doctrinal thinking in management and potentially also in law, be it taken from a textbook of hospitality law or from an essay on effective hospitality communication (see Blue, 2003). As a practitioner working in hospitality management, I see that Rhizomatic theory has great potential for an abstract discussion what how hospitality law and hospitality management intersect, but I take issue with five aspects which I see as the most salient counterarguments why Rhizomatic Theory cannot be implemented into hospitality management.

2.4.2. Counter Argument 1: Rhizomatic Theory will intensify compliance challenges

Rhizomatic theory may be useful to identify challenges at the intersection of hospitality law and hospitality management, but an organisational implementation, for instance in a hotel, would lead to severe compliance challenges. As I have argued, hospitality law does not provide much leeway in practice. This is because the normative reflects on the practical; what ought to be done and what is done. As hospitality managers, we continuously juggle legal requirements with practical necessities. Rhizomatic theory, as thought-provoking as its concepts are, might intensify compliance challenges in the industry by causing inconsistencies in implementation. Hospitality managers not only enforce the law as an ordering structure in society but also corporate standards that not only serve corporate benefits but mainly the clients and their interests in a safe and comfortable experience. Non-linear, decentralised approaches risk undermining the normative and practical consistency required to ensure these standards are met across contexts. When it comes to the implementation of safety regulations (e.g., fire safety codes), there is no space for interpretive variation, because this would not only lead to inconsistent service delivery but also regulatory breaches. Similarly, hospitality businesses must comply with strict privacy regulations (e.g., GDPR), where Rhizomatic theory's decentralised approach could result in varying interpretations of data handling procedures, leading to breaches in privacy compliance. In cases of cross-border compliance (e.g., differing food safety regulations or labour laws), Rhizomatic thinking could cause confusion and inconsistent practices, jeopardising the ability to meet local legal standards. During health crises (e.g., COVID-19), the decentralised

decision-making promoted by Rhizomatic theory might disrupt the uniform implementation of health guidelines, putting both guests and staff at risk (see Giousmpasoglou, Marinakou, & Zopiatis, 2021). I conclude and maintain that Rhizomatic theory cannot be implemented because it will likely undermine legal compliance and the overall customer experience.

2.4.3. Counter Argument 2: Rhizomatic Theory will make decision-making more complex

Rhizomatic Theory is collaborative and non-hierarchical. It is accepting of social, technological, and cultural polysemy, and it recognises the multiple meanings and interpretations that arise from diverse perspectives across one and the same organisational unit (Menz & Müller, 2008). In other words, Rhizomatic Theory requires a considerable amount of time for reflection, collaboration, and the acceptance of this multifaceted polysemy—all of which are simply impractical in the fast-paced environment of hospitality management. Consider, for instance, crisis situations (see Giousmpasoglou, Marinakou, & Zopiatis, 2021), such as customer complaints, health emergencies, or security threats. It is not unreasonable to argue for swift, decisive action, not prolonged deliberation or egalitarian consensus-building. This is why I maintain that Rhizomatic decision-making may be too slow and complex to address these immediate needs effectively. As a hospitality manager, I appreciate collective input a great deal, but I predict that the cognitive load of managing complex, non-linear decisions would overwhelm staff, divert attention from critical tasks, and delay necessary actions in time-sensitive situations. I assume this to be the case in many other industries too, where the need for swift, straightforward decisions in the hospitality industry contradicts Rhizomatic Theory's call for non-linear and interconnected decision-making.

2.4.4. Counter Argument 3: Rhizomatic Theory in practice will cost us dearly

Even if we were to consider Rhizomatic Theory as a potential basis for hospitality management, we would require substantial resources to shift

operational practices. Smaller organisations, which are already constrained by limited resources, would struggle enormously to adopt such a decentralised way of management. Such a shift would, in turn, likely require ongoing training, systemic overhauls, and structural changes that smaller organisations simply cannot afford. What is more, Rhizomatic theory lacks a clear methodology that would allow it to be easily applied in the context of managing a hotel or any other hospitality facility. As an industry that requires clear and actionable steps, Rhizomatic Theory does not provide us with a roadmap of any sort for operationalising the variables. This makes it difficult and likely ineffective to implement, especially for organisations that are based on predictable outcomes. Rhizomatic theory if implemented wrong will cost us dearly in hospitality management. If we force it upon established structures, it might likely destroy resources such as time and money, it may even lead to worsening working conditions. What I am getting at is that management can indeed benefit from implementing innovative concepts, some of which may even be found in Rhizomatics, but what needs to happen is a second layer of reflection, i.e., asking how can this be implemented without destroying the resources necessary for its implementation. In other words, the issue I take in relation to the question of theoretical brilliance and practical implementation is one of how to balance resources. Is it possible to implement Rhizomatic Theory gradually or does it have to be accomplished all at once? As much as I see the potential for critical management studies and hospitality law to benefit from this intellectual discussion, I doubt that practitioners would accept Rhizomatic thinking into their cost-benefit equations.

2.4.5. Counter Argument 4: Rhizomatic Theory will disrupt more than it will revolutionise

I maintain that responsibilities in hospitality tend to be very much fragmented into subsystems. In my hotel, we are looking at departments such as Front Office, Housekeeping, Food and Beverage, Sales and Marketing, Banquet and Events, Engineering and Maintenance, Security, Human Resources, and Finance and Revenue. Each of these is largely independent subsystems that ensure the working of the greater system. If someone proposes the implementation of a new strategy that has direct implications for my

managerial decisions, my main concern is not so much whether the idea is revolutionary, since whether revolutionary or not, if it benefits both the organisation and the people working in it, it is reasonable to consider such implementation. The danger I see in implementing Rhizomatic Theory in an organisation like a hotel is that it might not transform but overwhelm. This is because each department—legal, front office, food and beverage, etc.—has its own set of priorities and working methods. High command is with the general manager, which is why the idea of a decentralised but interconnected system is a theoretical ideal and not a practical reality. The different departments are structured hierarchically, i.e., the Front Office staff report to the Front Office Manager, who in turn answers to the Director of Operations or the General Manager. Similarly, within the Food and Beverage department, waitstaff, bartenders, and kitchen staff report to their respective supervisors (Restaurant Manager, Bar Manager, or Executive Chef), who then report to the Food and Beverage Director. In Housekeeping, room attendants and laundry staff answer to Housekeeping Supervisors, who report to the Executive Housekeeper. Security personnel are accountable to the Security Manager, who ensures compliance with safety protocols and collaborates directly with the General Manager on critical incidents. Sales and Marketing team members report to the Sales Manager or Director of Sales and Marketing, who devises strategies in alignment with the hotel's overarching business objectives. My main argument here is that for Rhizomatic Theory to make a difference in hospitality management, it must be operationalised to align with the structures of the industry. I am all in favour of reform, and I, for one, am also in favour of thought experiments. I can imagine Rhizomatic Theory to have a beneficial influence on thinking and doing hospitality, e.g., cross-training staff, forming cross-department problem-solving teams, and implementing knowledge-sharing platforms. However, I remain convinced that attempting to impose the Rhizome over the well-established structures of a hotel would likely disrupt more than it would revolutionise.

2.4.6. Counter Argument 5: Rhizomatic Theory is applicable but it cannot be fully implemented

My final argument builds on the concession that Rhizomatic Theory may be partly applicable to practice, but imposing the Rhizome over hotel

management would likely disrupt practice more than it would revolutionise it. As I have sought to outline, hospitality organisations, be it large hotel chains, boutique hotels, or even short-term rental services, are currently highly regulated and hierarchical spaces. This is not because hospitality lawyers and/or hospitality managers take pleasure in imposing rigid structures, but rather because such frameworks are necessary to ensure compliance with a wide range of legal obligations, from health and safety regulations to consumer protection laws, which serve to protect both the guests and the business itself in an increasingly complex and litigious environment. In a way, the hierarchy one encounters in hospitality is a direct reflection of the need for professionals to comply with the fact that often legal frameworks were not enacted with hospitality practitioners' perspective included in the norm-setting process. As a practitioner, as someone who takes the value of hospitality not only as professional duty but as a value of social interaction, I do see the relevance of Rhizomatic Theory and how it may help to explore it with a view to gaining a deeper understanding of how law as an abstractum is reflected in practice as a concretum, and vice versa. I do not argue that Rhizomatic Theory is inapplicable *per se*, but rather that it cannot be fully implemented due to the inner structure of the hospitality industry. What I see as the way toward realistic implementation is to critically reflect on how the academic discussion can move towards an integration of practical insights, but also how practitioners can implement insights from hospitality law and critical management studies. If Rhizomatic theorists see practical necessities and practitioners see the wisdom in challenging the organisation on theoretical grounds, I can imagine a transformation of hospitality law and the industry. If both theorists and practitioners insist on their mutually exclusive prerogative of relevance, neither hospitality lawyers nor managers will benefit from the potential of discussion as the one we are having in this paper.

2.4.7. Summing up

I sought to provide a critical reflection and find answers to the question of whether Rhizomatic Theory can be implemented in the context of hospitality law and management from a practitioner's perspective. I argue that this depends on what one assumes to implement. Rhizomatic Theory

is appealing as an idealised model for complexity in an organisation, but I fear not implementable in practice. Hierarchical industries generally have a difficult time achieving non-linearity and hospitality is no different. As organisational charts show, the hospitality industry is clear in lines of authority that reflect the standardised operating procedures, which especially holds true for international hotel chains. This is because the regulation of practice and the management of practice tend to reflect both the need for predictability and consistency of outcomes. My three counterarguments are thus as follows. Firstly, Rhizomatic Theory, if applied to the industry in a one-size-fits-all approach, might cause inconsistencies in relation to the legal and corporate standards operative (e.g., safety codes, privacy regulations, cross-border laws). This brings with it the unmitigated risk of breaches on various levels. Secondly, Rhizomatic theory's focus on a collaborative and non-hierarchical approach to leadership may slow down decision-making. Hospitality managers and other employees may be overwhelmed and potentially distracted from critical tasks. Thirdly, shifting operational practices to a decentralised model requires substantial resources. For instance, smaller organisations with limited resources would simply struggle to afford training and to implement all necessary changes. Quite frankly, the cost and effort of implementation might likely outweigh the benefits. This is why Rhizomatic theory has conceptual merit, but it cannot be fully implemented in hospitality management due to its potential to disrupt compliance, decision-making, and operational efficiency.

3. Joint concluding remarks

The arguments and counterarguments presented in this paper boil down to the following points of contention. The legal linguist considers rhizomatic thinking as a way towards a transformative framework that fosters adaptability, creativity, and inclusivity. The hospitality manager places his focus differently. He emphasises the practical challenges of implementing such a framework and bases his argument on the industry's inherent reliance on structure, predictability, and efficiency, inter alia. However, there is space for a middle ground. One such middle ground could be the conceptualisation of hybrid models where rhizomatic principles are applied to specific areas like crisis management or innovation, and the gradual adoption of rhizomatic thinking

in non-critical areas could test its practicality without disrupting core operations. This dialogical exchange seems to show that the primary value of rhizomatic thinking for hospitality may lie less in its direct implementation as an organisational model, and more in its capacity to function as a generative irritant within managerial and legal discourse. It challenges practitioners and theorists to confront undecidability, complexity, and interconnectivity not as problems to be solved, but as constitutive features of social systems. This shift in perspective, e.g. from seeking application to accepting critical interrogation, may be the most practical transformation rhizomatic theory can inspire.

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Acknowledgements

This interdisciplinary paper was completed during a research stay in the summer of 2025. We are grateful to the Faculty of Law at the University of Rijeka for providing access to its excellent library resources and for the warm hospitality extended. Our sincere thanks go to the Dean, Prof. Dr. Sc. Dario Đerđa, as well as to Prof. Dr. Sc. Sanja Barić, Prof. Dr. Sc. Ivana Kunda and Prof. Dr. Sc. Martina Bajčić. We wish to thank the City of Rijeka for its generous hospitality and the warmth with which its citizens welcomed us.

Our article is dedicated to the memory of Anna Schlemmer, born in 1912, the year the RMS Titanic struck the iceberg in the North Atlantic. Though the “unsinkable” ship was lost, she herself remained unsinkable throughout a life marked by endurance, dignity, and devotion to family. Carrying the fruit of the vine and caring for generations of her loved ones well into her nineties, she embodied resilience, hospitality, and unwavering strength. A woman of valour, who can find her? Far beyond pearls is her value.

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ISSN

2184-7649

E-ISSN

2184-9781

DOI

10.14195/2184-9781