

INTRODUCTION

Due to the positive response to the First Special Workshop “Truth and Objectivity in Law and Morals,” which took place at the 26th IVR World Congress in Belo Horizonte, Brazil, and the publication of an ARSP-Supplement, a book made up of a compilation of selected papers, Andrés Santacoloma Santacoloma and Gonzalo Villa Rosas have continued working on this project. The goal of this effort was to constitute a standing discussion group, i. e. a common place for those interested in the topics of objectivity and truth within the law and morals, to exchange ideas and perspectives, and to debate on these subject matters.

The aim of the first workshop was to open a discussion concerning the convergence of beliefs and the acceptance of some kind of realism as necessary conditions for objectivity in practical reasoning, as well as the possibility of truth in law and morality. The perspectives presented at this Special Workshop put forward different but correlated topics. Some of them were the applicability of Bayesian models in order to make objective legal decisions; the search for truth in and through legal argumentation; the intelligible character of rules inside theories of interpretation, which guarantee the coherence and the integrity of law; the role of semiotic analysis in the construction of the objectivity of law; the procedural and contextual aspects of objectivity in legal reasoning; the role of objectivity in the distinction between the context of justification and the context of discovery; the truth problem of normative propositions and legal statements; and the incompatibility of non-factualism with the traditional account of validity and legality, as well as hermeneutics and the possibility of seeking truth in law.

In order to have a new version of the workshop and to seek new perspectives in its direction, Santacoloma and Villa Rosas decided to invite André Ferreira Leite de Paula to work as co-chair. The Second Special Workshop was held at the Campus of the Georgetown University in Washington D. C., USA on July 27th and 28th 2015. Fourteen lecturers from around the world participated in it. This current compilation contains a selection of papers presented there, and it has been divided into four parts, which are organized according to a criterion of decreasing generally of treatment of the respective topic.

The first part consists of contributions about objectivity and truth in law written by Matti Ilmari Niemi, Triantafyllos Gkouvas, Andrés Santacoloma Santacoloma, and Samuele Chivoli. Arguing that the objectivity of legal knowledge is a way to outline the relationship between the sentences of legal dogmatics and reality, and the nature of legal reasoning, Matti Ilmari Niemi discusses in his paper, “What is the Foundation of Objectivity in the Field of Law?,” a fundamental question: “is it possible to combine the perspective of a particular person in the world with an objective view of the same world?” From the very different conceptions of objectivity, Niemi considers three conceptions introduced by Marmor and a fourth conception presented by Rawls. The first and strongest conception can be called a metaphysical or ontological one: “objectivity means correspondence between a statement and its object in the discernible world.” The second and weaker conception can be called the semantic conception of objectivity: “a statement is objective if it is a statement about an object and it is subjective if it is about the subject making the statement.” The

third conception can be called the logical conception of objectivity: “a statement is objective if it has a determinate truth-value.” According to this conception, truth refers to the justification of statements in the cognitive and external sense. An objective legal statement provides information about a society, that is, about the legal order of a society as a fact-based institution. Since all three conceptions that Marmor puts forth presuppose a very strong concept of truth, Niemi abandons them altogether. The fourth and weakest conception, which Niemi calls “the constructive conception of objectivity,” focuses on the criteria of objective reasoning, instead of presumed entities, objects or truth conditions. On these grounds, he argues that this conception is the only one consistent with the nature of legal reasoning.

Triantafyllos Gkouvas analyzes in his paper, “Legal Truth Without Legal Facts: A Metaontological Argument,” the problem underlying the following question: “do legal utterances expressing true legal propositions necessitate the existence of legal facts as their truthmakers?” This problem, he believes, is not peculiar of law, but a local manifestation of a broader problem arising at the intersection of ontology and the truthmaker theory. Gkouvas’ aim is to provide a negative answer to the legal version of the question in the hope that the strategy can lend some support to those who are wary of inflationary approaches to the ontology of social artifacts, like law. Roughly, the idea is that whereas the preservation of the veridicality of discourse about ontologically superfluous entities remains a venerable task, it also has no implications for what a correct account of the truthmakers of claims featuring these entities should be like. This way of disassociating one’s ontological from one’s truthmaker commitments helps him to explain why quantificational claims in metaphysics are not “ipso facto” translatable into assertions of candidate truthmakers. For his purpose, Triantafyllos employs Ross Cameron’s version of the truthmaker theory of ontological commitment to defend the hypothesis that legal propositions can be made true by non-legal truthmakers, namely by facts that do not qualify as legal facts in any informative sense. In his account, the dispositional facts about what is enforceable in a given political community can assume the task of making assertions about the truth of the legal content. The latter facts do not make any essential reference to legal entities of any kind (objects, properties or relations). This enterprise allows him to cast in a better light the legal relevance of metaontological concerns raised by philosophers like John Heil and Heather Dyke concerning the methodological pitfalls of doing ontology via studying language.

In “Semantical Rules and the Theory of the Limit of the Wording: Seeking for Objectivity in Law,” Andrés Santacoloma Santacoloma faces the problem of objectivity in law and morals on the path of the philosophy of language. The possibility of the objective meaning of legal concepts raises crucial questions for law, such as the dependence of the meaning of a concept from the community and/or individuals and the possibility of an entire community being wrong in applying a concept. Further, on the one hand, there is tension that exists between the historical and social changeability of concepts, and, on the other hand, the possibility of meaning being fixed, and, therefore, objectively recognized. In the first part, the numerous questions that arise in this field are analyzed with regard to Matthias Klatt’s theory concerning the limitations of wording, as discussed in his book, *Making the Law Explicit: The Normativity of Legal Argumentation (Theorie der Wortlautgrenze)*, which is based on Brandom’s theory of meaning. The possibility of separating semantic and

legal interpretation settles one of the central disputes of the German debate between Matthias Klatt and Ulfrid Neumann: a debate that raises questions of viscosity and the risk of hypostatization of semantic problems in normative legal argumentation. After assessing Klatt's roots in Brandom and Neumann's objections against Klatt's position, Andrés Santacoloma Santacoloma makes a compatibilization between viscosity and realism and argues for a return to a pragmatist theory of meaning based on Peirce's pragmatic maxim.

Following the well-known notion of a conversational implicature introduced and elaborated by Paul Grice, Samuele Chivoli's discusses in his paper, "The Speaker Dilemma in Legal Implicatures, Responses and Comparisons," the notion of a legal implicature, i.e. a conversationally implicated proposition of law, and presents a speaker dilemma regarding legal implicatures. The dilemma concerns how the intentions of the members of a group of jointly acting agents should be aggregated if the group is to collectively communicate a given content and, at the same time, eliminate indeterminacy, since Law-making bodies, which are usually made up by more than one person, are not per se recognizable as having an intention by saying what they say. Putting them to work in different scenarios, which lead to conflicts of intentions, Chivoli introduces the voters (V-) and the supporters (S-) principles, in order to explain the functioning of collective intentions. His enterprise concerning the speaker dilemma is twofold. On the one hand, he outlines the differences and similarities that the speaker dilemma bears to the discursive dilemma famously generalized by List and Pettit, and, on the other hand, he evaluates three ways of responding to the puzzle by dissolving it and arguing that the dilemma resists all of these criticisms.

The second part, with contributions from Bruce Anderson and Michael Shute, and André Ferreira Leite de Paula is dedicated to objectivity and its relation to legal reasoning. André Ferreira Leite de Paula's main concern in "Revisiting Discovery and Justification in Legal Theory" is the clarification of the manifold possible versions that the distinction between discovery and justification can assume and their relations to one another in legal theory. The "standard version" of the distinction means, according to him, a gap between the empirical factors that influence legal decision-making and the final presentation of the judicial decision. This standard version is what he recognizes as the "epistemic dichotomy" between discovery and justification. After reconstructing the debate in the branch of the philosophy of science, De Paula argues that the "epistemic dichotomy" between discovery and justification is both cognitively necessary and normatively desirable. Since this is a dichotomy between effective and presented reasons, he recognizes this dichotomy between discovery and justification as a "normative" one, distinguishing two levels of criticism: a level of particular cases and the level of the legal system as a whole. Considering a distinction between, on the one hand, empirical factors that influence the emergence of legal claims ("discovery"), and, on the other hand, normative standards of decision and truth ("justification"), he stresses the necessity of maintaining a "dualism between genesis and validity," especially with regard to allegedly "realist" research attitudes that engage in explanations of the emergence and of effects of legal claims by reference to pre-intentional, post-intentional and non-rational factors.

In their paper entitled “The Need for a Better Understanding of Legal Reasoning and Feelings,” Bruce Anderson and Michael Shute focus on aspects of legal decision-making that have been typically neglected by traditional approaches of legal justification, namely the process of discovery. Legal decision-making is an intelligent and, at the same time, an emotional performance. In order to analyze the complex relationship between the psychological way of reaching decisions in actual judgment performances, the authors consider in their paper the functions and operations that feelings such as empathy, wonder, curiosity, anger, and mercy normally play in real cases. As their analysis reveals, feelings are indicators of values. Feelings play a central role in the dynamic of insights and judgments, in the processes of testing solutions in judgments of fact, and of reaching coherence in legal decision-making. After briefly reconstructing Amalia Amaya’s approach on coherence and emotions, Anderson and Shute provide an alternative account on coherence in legal reasoning. They do so by adding the necessity of reflective insights to be considered in the framework of a self-attentive analysis of decision-makers. The purpose of which is to understand their own mental process of decision-making by reaching self-awareness of the conditions of the possibility of adequate judging that go beyond rationality.

Two contributions of this volume deal with objectivity in relation to Kelsen’s theory of law. Jing Zhao and Monika Zalewska wrote these contributions, and they constitute the third part of this volume. In the paper entitled “The Justification Problem in Hans Kelsen’s Theory of Legal Validity,” Jing Zhao addresses the question of whether Kelsen’s basic norm is really able to justify both the validity of a legal order and its practical normative force. The question arises precisely because of Kelsen’s selective attitude toward the reception of Kant’s philosophy. On the one hand, he has adopted Kant’s doctrine of “schematism” at the epistemological level as a condition for objective legal knowledge. This has enabled him to say that the basic norm really exists in the juridical consciousness as a result of simple analysis of actual juridical statements. On the other hand, Kelsen has not embraced Kant’s practical philosophy at the same degree as evidenced by his statement: “The doctrine of the unity of the will and other practical commitments were not adopted.” Kant himself has needed practical commitments in order to justify the normativity of the practical “ought” that is implied in the legal order. On the contrary, Kelsen’s basic norm assumes, at the same time, theoretical and practical justificatory functions. Jing Zhao argues against the possibility of making a claim of practical justification of “what should I do” on a merely epistemological basis and that this procedure leads unavoidably to a loss of the aspired scientific purity.

In “Objectivity and Hans Kelsen’s Concept of Imputation,” Monika Zalewska is concerned with the complex correlation between objectivity and imputation. Imputation is a category that lies precisely in the field between cognition and construction, since it has a subject-dependent existence and, at the same time, it provides the condition of the possibility of objective knowledge. Imputation has, naturally, a history of development in legal theory, which can be analyzed in regard to the many phases of Hans Kelsen’s work. Here is where Zalewska’s analysis are focused: she informs us of the evolution of the concept of imputation in the constructivist, classical and skeptical phases of Kelsen’s thought and shows us how its meaning and function has changed by passing through the notions of central imputation (Ver-

schreibung) and peripheral imputation (Zurechnung), and varying between implication and a form of the transcendental argument and between law and morals.

Last but not least we have two contributions from Michele Saporiti and Gonzalo Villa Rosas. These two papers are gathered in the last chapter of our volume, which deals with issues concerning objectivity and truth in morals. In “*Quid est veritas?: On Conscientious Objection and Truth*”, Michele Saporiti aims at analyzing the relationship between conscientious objection and truth. The first approach to the problem is a dialectical reconstruction of the truth-based approach to conscientious objection. By means of this reconstruction, Saporiti explains the nature of conscientious objection as opposed to other instruments of resistance and, following Scarpelli, he argues for a metaphysical-axiological model in which the universalistic reference to truth is the key-element within this model of justification, where the maxim “*Veritas non auctoritas facit ius*,” through which he explains that the conscientious objector becomes a militant of “*ius*” against “*lex*,” seems to play a central role. He also considers a positive law-based version of the conscientious objection, which is held as an instrument to the realization of the plurality of our contemporary democracies. The two perspectives have important implications and moral premises in terms of theories of conscience, as he also explains while scrutinizing the two “logics” of conscientious objection from the legal viewpoint. In the end, he provides some hints concerning the goals of the truth-based and the positive law-based approaches to conscientious objection, and their effects on contemporary democratic societies. Even taking into account the differences on perspective and the possible consequences, Saporiti concludes and stresses in his paper that “a disobedient conscience still represents a useful chance for our constitutional legal systems to take moral conflicts seriously.”

In his paper, Gonzalo Villa Rosas approaches our volume’s topic with a detailed assessment of the pertinency of Harman’s and B. Wong’s theories in order to raise a general criticism against moral relativism. According to the author, numerous criticisms raised against these theories reveal a structural feature of relativism, which makes it unsuitable to be a moral theory. If relativism can be characterized as the theory, which defends a relational conception of truth and which takes seriously the premise that for a given domain there can be faultless disagreements within that domain, then a consistent relativist account must always involve an observer’s perspective. However, it seems unquestionable that morality is a normative practice, and that the moral theory ought to take seriously and try to make sense of our moral practices. In this vein, we cannot attain a suitable understanding of morality without taking into account the perspective of those who regard it as a normative body that gives them reason for action.

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