The strange entanglement of jurimorphs[*]

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A chapter prepared for a volume by Kyle McGee
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Since I have had the privilege of reading all the chapters of this edited volume and since I don't have by far as much experience of legal practice as most of the authors, I think it is more appropriate that I limit my piece to comments and emendations of what they themselves have done. Actually this is in keeping with my own way of pursuing the inquiry into modes of existence (AIME) that orients several of the arguments developed in those pages. So I will use the material presented in the preceding chapters to offer *contributions* to the inquiry in the same style and format as the many snippets I have assembled over the years and which are still being collated by co-inquirers in the site *www.modesofexistence.org*. It is through that process of assembling multicolored tesserae that the mosaic begins to conjure a more or less coherent figure. By following this habit, I won't have to apologize for the disjointed nature of the following paragraphs. Let's just hope that in the end they will make some sense. (I also apologize for a wide use of the jargon of the AIME book and site to facilitate connections with the material assembled there).

Before I really start, I want to stress how reassuring it is for me to see that it is actually the mode of existence I call [LAW] that has been so generously commented by English speaking jurists. By the way, I fully agree with Van Dijk (p.xx) that *Assignation* should really be used to name the mode in question so as to avoid confusing it with the multifaceted domain of Law, but I feel that the acronym [ASS] will create some unwanted diplomatic frictions![1] So far, it is the only mode where the conversation has progressed

[1] In an older version of the project law was defined in French as LIAISON, religion as PRESENCE, politics as RASSEMBLEMENT, fiction as ENVOI, attachment as EMPRISE, organization as REPARTITION, which would have probably been better. I now regret having created a confusion between domains and modes for the sake of not introducing jargon.

to the point of allowing a few fascinating diplomatic encounters.[2] I am really grateful to the authors of this volume and especially to its editor, Kyle McGee. Actually I began to really believe in my own project when reading Kyle's book (2013) on how I should have studied law!

I- 1- Overall, I take this volume as a confirmation of my claim that [LAW] has resisted much better than all the other modes the crushing weight imposed by an exclusively epistemological definition of what true and false really mean. If I employed the legal institution to offer a tentative protection to the diversity of all the modes before the notion of preposition [PRE] was firmly instituted, it is because everyone seems to agree that law has its own way of defining true and false, although everyone also agrees that such a way does not resemble what is needed for extending the scope of referential statements [REF]. Even if this original way of the law is ridiculed for its formalism, belittled for its archaic dramaturgy, mocked for its wide use of imaginary solutions, it remains the case that it is always recognized that what *holds legally*, well, holds for good — in some fashion to be determined.

In that sense, Law has been respected by the Moderns in a way that has never been the case for divinities, gods or fictions, whose dignity has been so thoroughly crushed that they have been taken as "things in the head"; that is, for things which have no existence at all. By contrast, when confronted with law, Double-Click [DC], my nemesis, remains toothless. Because the successes of Science have never intimidated them that much, I don't take it as a coincidence that jurists have understood the AIME project long before any other group of practitioners paid attention to their own modes. I wish others could work on the project as efficaciously as jurists, but I gather that they prefer nursing the wounds that [DC] has inflicted on them instead of rejecting the diktat of its epistemological claims — which, I remind you, crush scientists just as much as they do psychologists, theologians or economists. It is because law has a way to affirm its existence in the world without apologizing that it plays a crucial role in the project of the Inquiry. The difficulty is to exactly weigh its ontological dignity.

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[2] Richard Janda from the McGill Law School in February 2014 had kindly hosted the AIME team, together with anthropologists Eduardo Kohn and Peter Skafish, in what has been one of a few diplomatic encounters where the *Middle Ground* has really been drawn in the way anticipated in the Inquiry. We are still debriefing this amazing experience. See modesofexistence.org/xx Several of the authors chaired by McGee participated in an AIME meeting in Paris on the xx.

2- That there is an exteriority, an objectivity, or rather an objectity, a solid outside presence of legal ties is essential to reconstitute the strange materiality of what we call "the social world". And this is true even when legal statements are taken to be being nothing but a formal work of imagination, a *cosa mentale*. The claim of actor-network-theory (ANT) is that the social world is what should be explained and not what provides any explanation. In this volume, it is striking to see how much of what, in earlier years, would have been "put into a social context" before being "socially explained", is much more powerfully rendered by following the complex detour of legal ties. Class actions against industrial pollution,[3] sovereignty and the "Honor of the Crown",[4] police disciplining itself,[5] the organization of hospitals,[6] all those matters of concern are not explained by being put into some bigger frame that would have given sense to the "black letter law". On the contrary, it is by paying close attention to the meandering trajectory of what could be called the "*red and bright letter of the law*" that some of the aspects of what we render in shorthand as "the social" are accounted for. In that sense, the *vinculum juris* seems to retrace the path of associations better and more powerfully than any other.

Such an attention marks a paradigm shift from Critical Legal Studies, which, as a rule, has been critical *of law*, but has swallowed the usual definitions of what the social was supposed to be made of without the least critical distance. Thus, for me, this volume is also a vindication that there exists an alternative to critical studies that is no less critical because it takes the ingredients making up the social of sociologists with just as much distance or rather as much *critical proximity* as that of legal formalism. Law has its own social theory and social practice that is much more powerful than the social explanations offering to "embed" it "in" society. This point seems to be

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[3] McGee "One unique **quality** of law is that it is well-suited to **forging connections** between actions and harms despite insurmountable disagreement between those summoned by a common divisive issue."

[4] Walverde and Weaver : "Thus, the honour of the Crown functions to impose duties on government even in the absence of – or prior to the establishment of – the kind of specific aboriginal interest that would be sufficient to give rise to a fiduciary obligation."

[5] De Bellaing "However, their investigations can be understood as explanation tests of what is at stake in that social process that the police's use of force is, insofar as the investigators manage to decide, and insofar as they must, somehow, to decide, produce a work in the form of a file capable of stabilising competing, unstable versions of truth, through a meticulous and comparative description of the disputed scene." (page xx)

[6] Cooren

understood much better by legal practitioners than by sociologists of Law. I subscribe to de Sutter's remark (2009) that law possesses an intrinsic philosophy much more articulate than what philosophers have attempted to offer as its "foundation". I could say that AIME tries to reverse the effort by philosophers to give law any foundation and to spur jurists into respecting even more the way in which legal ties are able to see through and to perform society.

Of course, to fully grasp the span of the AIME project, this argument should be made for the other modes as well, so that all types of associations (the alternative definition of the "social" that ANT provides) are being simultaneously granted their own social theory, social practice and specific ontology. Attempts at studying a few embranchments are made in this volume, for politics [POL], for fictions [FIC], a little bit for reference [REF] and techniques [TEC] with some passing allusions to religion, organization and economics. I will come back to some of those examples to clarify a point of method: the difference between comparing modes (through what I call *crossings*) and comparing *domains* (a hopeless undertaking, in my view). Several chapters offer a good occasion to clarify this confusion of methods and establish on a firmer basis how the sociology of associations could benefit from an analysis of modes (in our jargon the rather undeveloped crossing we call [NET.PRE]).

II- After those two remarks about what I take as a vindication of my attempt to highlight the profound originality of law in the anthropology of the Moderns, I'd like to summarize in my own words what I see as broad agreements among the chapters before shifting to more contentious matters.

1- I was pleasantly surprised by the view developed in most of the contributions that there is no way to speak *of the law* without speaking *legally*. What a relief from the obsession around norms and the normativity of law.[7] To expand what I have just said about law's intrinsic philosophy and social theory, law has no reflexivity except its own, or, to put it in another way: *law is its own meta-language.* Which is true of all the modes, one could say, since this is actually the general principle of method of the whole AIME project: there is no meta-language, except that of prepositions [PRE] which say

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[7] Normativity, in AIME, is a multimodal term since each mode is defined by its own felicity and infelicity conditions. Even morality [MOR] cannot claim hegemony over the notion of norms — nor does law.

nothing at all about any content but just provide the key with which what comes next should be qualified.

Yet the authors in this volume have made this general claim much more specific: what they mean is that either you talk legally about some aspects of the law and you *direct your attention* to one segment of the *legal institution* — be it a case, or a professional expert, or a text, or even a building, an artifact — or you don't speak at all about the [LAW]. (Remember that the acronym [LAW] designates the mode, the enunciation trajectory, the assignation, what Serge Gutwirth would call Law2,[8] and that Law, capital L, would code for the domain, that is, Law1 in Gutwirth's parlance,[9] or, depending on how we clarify the matter further, the institution — the relation between the two still in need of some clarification (see below).

The modest expression "direct your attention" is here crucial because it means that either you *follow the trajectory* leading to some really existing case or enter into contact with some practitioners, and then you speak legally about the law, or you talk nonsense about something that bears only a vague relation with the "legal" — no more than some sort of homonymy. Without such a *directionality,* any argument about the normative power of law is groundless. Conversely, this means that any course of action becomes "legal" [LAW] when it is *streamlined* to direct attention to any part or aspect, past, present or future, of the case law (I use this expression easily understood in the Anglo-American tradition as a shorthand for the whole material set of entities gathered under the label Law). McGee, in my view, has offered the best word to describe what those attention-orienting-devices look like when they begin to be *streamlined* to pave a trajectory leading to some aspect of the case law: *jurimorph*. Most of the papers in this book deal with how to handle, pile, limit, discard, combine or dismiss jurimorphs. In effect, I am going to

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[8] Gutwirth (this volume): "Now, they will invariably consist of an enumeration of legal professionals: judges, advocates, attorneys, public prosecutors, paralegals, the jurists in the legal services of enterprises and administrations, bailiffs, registrars and so forth; not the political representatives that populate the representative assemblies, neither the members of bodies with legislative powers, but all those who are involved in the production not of rules, but of decisions, amongst which the judges and the members of courts are the most emblematic examples" (p.xx)

[9] Gutwirth (this volume) "Law1 is thus intimately interwoven with government and governance, economy, power balances, geopolitics, ethics, religion, history – it carries, expresses and imposes the content and values of the material sources - but nonetheless, it remains persistently characterised as "law"."

expand on McGee's presentation of the problem that he himself says might be a bit obscure:

> "Risking a degree of obscurity, we can say that the content of law is not only irremediably bound up with its conditions of enunciation, but is **fully identical with those conditions**. And some of those conditions are packaged in legal devices that we can unwrap and explore. Provisionally, we can define legal devices as assemblages of **mostly non-legal beings** deployed for a legal purpose, namely to give consistency and objectivity, as well as direction, to a specific **legal trajectory**. The device formats, translates the diverse strata bound up in a disputed matter into legal discourse, but while this entails certain technical reductions, it entails no ontological reduction of agency. Technically, the various entities and agents at stake are semiotically refigured – **jurimorphized**. This, we will see, amplifies their agency rather than (or in addition to) diminishing it." (p. xx) (my emphasis)

Either there is a path leading to some aspects of the case law and the jurimorphs can be said to be "true" in the [LAW] sense of the adjective, or the path is interrupted and there is no way those pointing arrows that direct our attention to the case law can be said to be legally truthful, no matter how much normative virtue they are supposed to carry. Which is just a way of saying that without the institution of law, no statement or action may be said to have legal force. They might gesture toward an absent state of law, or they might exert or resist violence, but there is nothing legal to their course of action. The difference between the two regimes of action can be captured thanks to a somewhat shaky metaphor: attention-orienting-devices-to-some-aspects-of-the-case-law are like signposts leading a cohort of tourists through the Louvre Museum to shoot selfies with Mona Lisa in the background. Either the signposts lead there and they are true to form (in this case the [ORG] type of truth conditions), or they are piled in the office of the janitors and they don't possibly have any attention-orienting role. Either jurimorphs point their arrow-like ends toward the institution of law, and someone paying attention to what they do is moved from one jurimorph to another until they reach some place that we recognize as having some relation with the legal establishment, or they are a disorderly heap like signposts in the janitor's office where they just gather dust. In other words, to speak legally you need a *ground*, to use the word that is closest, according to Richard Janda, to what the French lawyers I studied call "*moyen*" or "*moyen de*

droit". And no matter how much you try to materialize and to spatialize this word "ground", you will never fathom enough how mundane, material and technical law can be. For this reason you would have dealt only with what I have called its *superficiality* or what François Cooren prefers to call its "dermatological" character! (That law is a question of filaments and membranes will be clear in a minute).

As Graham Harman shows in his chapter, such a sensitivity to conditions is also true of group-making (what is taken in AIME as the political [POL] Circle) and, I will add, which is even truer of religion [REL]. I will come back to this odd property common to the third group, those who deal with *quasi-subjects*. For the moment, it's sufficient to point out that the three of them gain or lose the meaning of what they say or how they act on the basis of a tiny difference of tone or direction. What Austin had captured with the notion of *performative*, something so sensitive to the situation that it can be either amazingly fecund, to the point of creating what it says, or totally moot, just adding more verbosities upon verbosities. Any preacher knows that what she says loses its meaning at once if she is not able to transform the millenary old words read during the service as something that renders the Word present in the situation, in this temple, to this flock. And so does any politician (not necessarily a professional of politics) when she feels that she is unable to *roundly* assemble, by the way she behaves and she talks, those to whom she is offering a representation of what they would wish to say and to act if only they were speaking by themselves — except they don't, she does the speaking. But assignation [LAW] is specific in the sense that it has no other content than the institution it directs attention to. The whole history of Churches has been made by people who claim that they are starting afresh to define what should be preached — and most often *against* the established Churches. And the same is true of politics. But someone who would claim to speak legally *beyond*, *above* and *in spite of* what the complex apparatus of the law is able to do, would simply be a fool — or else, as Oliver Wendell Holmes would say, someone who has totally mixed up law with morality, justice or political militancy. The reason law is often deemed "slow", "weak", "conservative", even "reactionary", is also the reason its truth conditions are so harsh: either you are in it or you are not. It is not about the Church but about the Law that one should say: "Outside the Law, there is no salvation" — *legal* salvation, that is.

2- This is also the reason why it is so tricky to define its autonomy. Because of this truth condition, it is tempting to say that Law consists of a

homogeneous *domain* that is clearly delineated by a membrane (as I just said, you are inside it or outside it). And the temptation is irresistible if you consider that law has no other meta-language than itself. Very few have resisted this temptation, and some, like Niklas Luhmann, have made a systematic doctrine out of it! And yet, a distinction should be made between the *tautological* nature of legal action (now redescribed as the arrow shape of many jurimorphs) and the *autonomy* of a domain that could be called the Law. Several chapters of this volume explore the paradox of a mode that is simultaneously the *most tautological* of all (since it does nothing but connect jurimorphs to one another) and the *least autonomous* of all (since it is able to deal with any entity, to absorb any matters of concern while being sensitive to multiple influences). An argument on law *as a mode* becomes interesting or futile depending on whether it keeps the full tension of that paradox. As soon as you try to weasel out, you lose any chance of defining the conditions of felicity of this most peculiar mode of existence. (And of course, once the specifications have been listed, its paradoxical nature will disappear: we will be dealing with a bona fide mode).[10]

That law is always defined tautologically has been underlined so many times that I can pass quickly. Still, I can't resist commenting on a nice proof of that well known point inadvertently offered by Serge Gutwirth when he claims to provide at last a *non*-tautological definition of law. For him (this volume p.xx) the directionality of jurimorphs is defined because they always point their arrows toward what a judge might possibly decide. He writes:

> "The distinctiveness of law lies in the **singular mode in which it seizes cases**. In other words: everyone can practice law, everyone (who is called to do so) can become a legal practitioner, and that is, when **she is moving or moved forward** by the legal regime of enunciation with its many particular constraints and value objects (...). But eventually this way of "moving forward" and "making the law" always, and it can't be said enough, amounts to **anticipating** how and what a judge or court would **decide**." (p.xx) (my underline).

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[10] Such is the test for every mode: that it is defined enough on its own terms that it does not have to bow to others, or apologize for not being like the others, but that, on the contrary, it is now able to shed its own light on all the modes. Exactly what was impossible when every entity was made visible at the wavelength of [DC].

This is a clear restatement of Holmes's famous dictum that law has no other content than the expectation of judges' "oracles" (1897)[11] and a nice way of summarizing law's specificity as what paves trajectories toward some segments of the case law.

But what interests me is the *footnote* appended to this passage. It reads: "I think it is worth noting that this is a description of law **that avoids the tautology** (cf. Latour 2012, 359)". I was greatly amused that defining law as anticipation of what *a judge* would decide be considered by such an astute legist as being *less tautological* than the many definitions I refer to in the cited passage where the adjective "legal" is repeated over and over again to explain to the outsider what the hell law is (six times, for instance, in McGee's quote above!)! Defining what a judge does is just as difficult, as Gutwirth acknowledges, as what "legal" means in the legal enunciation regime. If anything, defining law by the path potentially able to pass through a *judge's* decision is an even more tautological way than defining law by what is *legally* binding. The connection with the material, corporeal, and corporate nature of the legal institution is rendered even stronger. Which is an excellent way, once again, to *ground* any recourse to law. As Serge says: "it can't be said enough".

3- Clearly tautology is part of the specifications. What about autonomy? Why it is that this sharp membrane between inside and outside remains unable to stop the infinite permeability of legal paths to any sort of influence? In every legal case you take, *extra-judiciary* elements immediately begin to multiply (we will soon see why this is a calamitous adjective). If law is like a protective roof, it leaks aplenty; if it is a border, it is so badly defended that it is crossed by thousands of migrants! Here is the heart of the matter and a difficult point to make because, as Harman says, it is a problem of *topology*; we seem to lack the conceptual tools for mapping trajectories and differences between modes. Graham's metaphor is apt: "Luhmann tends to locate each of his 'social systems' in a **distinct** professional **place**, Latour conceives of his modes as separate radio **frequencies** all occupying **the same air space**" (p. xx) (my emphasis).

Somewhat uncharitably, I will use one passage of the present volume to clarify this point. In his chapter, David Saunders offers a critique of my book

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[11] Holmes: "These are what properly have been called the oracles of the law. Far the most important and pretty nearly the whole meaning of every new effort of legal thought is to make these prophecies more precise, and to generalize them into a thoroughly connected system." *The Path of Law*, xx.

The Making of Law by claiming that I stick too much to law as such, to the point of making impossible any reconnection with the social and historical context. This critique is especially puzzling since all the cases I have followed show the constant influence on the decisions of many extra-judicial elements. Indeed, the peculiar body of "judges" I studied (the French Conseil d'État) is composed of characters who pride themselves for *not* being full time judges but politicians, managers, militants, or administrators who constantly move back and forth from the executive, legislative and judiciary branches (and also the private sector), making a mockery of Montesquieu's division.[12] And yet they engineer statements that are legally binding not *in spite* of but *because* of this complete permeability — at least in their eyes. As I said earlier, this is the paradox that should be kept in full force if we hope to have a chance of detecting law's peculiar mode of existence.

Saunders however does not see it that way: on the contrary he insists on peeling away the superficial and tautological dimension of [LAW] I uncovered and to sandwich it between layers that are said to be deeper or higher —the social forces, the normative dimension— and which cannot be "aligned" with the law for the same reason as bacon and gruyere cannot be "aligned" with the bread above and below. Here is his critique:

> "Latour's response is to elevate 'irreduction' to a 'principle'. But with this move, is he himself **closing-off the possibility** that we can be 'anti-reductionist' and yet remain capable of **recognising that in certain social and historical conjunctures** law and legal institutions have been **fully aligned** with religious, political or **other social** institutions and functions? This more historically open form of 'irreduction' is **absolutely precluded** when Latour's 'principle' **forecloses** on the possibility – or the fact – of law **sometimes** being 'reduced' to or **aligned** with what's taken to be a '**deeper**' or '**higher**' level of reality, be this an **underlying social structure or a set of overlying norms**." (p.xx) (my emphasis).

"Closing off", "absolutely precluding" and "foreclosing"! This is harsh, especially when addressed to an actor-network theorist who prides himself on freeing connections in all sorts of ways! In effect, we witness here why the topology that distributes the world by domains cannot possibly account for a mode. Once you have this idea of the social as a certain type of stuff and a

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[12] To the point that the European Court decided that commissaire du gouvernement are not really part of the judiciary etc.

certain type of material, when you wish to pour it inside another equally homogeneous domain, they never mix, but at best *sediment* on top of one another. Saunders' topological principle is that of a cassata with, inevitably, the "social structure" below and the "norms" "overlaid" upon them, the domain of Law being squashed in the middle.

The principle of irreduction mocked by Saunders, on the other hand, draws upon a totally different topology. If there are no extra judicial factors in accounting for legal decisions, it is because everything in law is extraneous! This is exactly why McGee's term of jurimorph is so apt for capturing what is going on: *everything in law is extralegal and streamlined to pave the trajectory* of moving toward the law or being moved by the law. If I go back to the janitor of the Louvre Museum, we easily understand that his signposts are made of cardboard, paper or zinc and that this extraneous materiality doesn't "absolutely preclude" or "foreclose the possibility" of being streamlined to act as signposts for tourists looking for the Mona Lisa. It is the opposite that would be surprising: how would a signpost work without the standing it gets from the substance of paper, cardboard or zinc? Similarly, what else could law be made out of *if not out of extralegal elements*? Law is what happens to extralegal features when they are jurimorphed! To give shape to something, that is to "morph" it, you need this thing there first.

This is why it is more than an understatement to: "recognize **that in certain social and historical conjunctures** law and legal institutions have been **fully aligned** with religious, political or **other social** institutions and functions". Here is a clear topological mistake. It is *constantly* the case and at all points that law is bound to history and society, but it is never a question of "alignment". Just like signposts are *continuously* made of cardboard, paper or zinc and not at some point or in a certain layer. What Saunders does not get is that the difficulty of "aligning" law with "social structure" and "overlying norms" is precisely due to what the irreductionist social theory of actor-network has been fighting all along. Once you accept the sociology of the social handed down by (Durkheimian) sociologists, all phenomena disappear from view and you are left with mysterious puzzles to distribute the material into distinct pots much like Luhmann had to do. It is such a topology that creates the amalgams that "absolutely foreclose" any anthropology of the Moderns. Saunders and I are not using the same definition of what it is to connect, to align, and to trace. The failure of Critical Legal Studies — and critical thinking more generally — to make more than a dent in the practice of Law has no other explanation: the topology they use is

so far removed from that of practitioners that it passes over them like rain on a duck's plumage.

By the way, this a nice confirmation that the two projects — ANT and AIME — that some people have difficulty reconciling pertains, from day one, to the same enterprise [RES.PRE]: without redescribing sociology as the science of associations — and not of the "social" — it's impossible to see why it is so crucial to define precisely the different ways to *connect* associations — precisely what modes of existence do well.[13] Jurimorphs are simply one of those ways of building associations entangled within many others.

4- I have to concede that this alternative topology, that is so obvious for practitioners and so bizarre for commentators influenced by sociologists of the social, is more difficult to receive in Law than elsewhere. The three modes that I have listed under the label of "third group" share this same property of being made entirely of "extraneous" material. It is actually why I call them *quasi-subjects*: they morph or they streamline elements, entities, matters of concern that come from elsewhere[14] generating some of the constituents of what we used to call "subjectivity".[15] It is also why, when you begin to analyze them, you feel some form of disappointment at how little substance they carry. And yet, it is obvious in politics as well as in religion that those two domains are a hodgepodge of totally disjointed features vaguely assembled so that it is very hard to take them for homogeneous sets. Just witness the endless fights political scientists and students of religion have to wage simply to define what is common to their respective fields. If Law gives the appearance of a real domain (and that might excuse Luhmann's as well as Saunders's cassata metaphysics) it is precisely for the reason well-articulated in this book by the dispute between Gutwirth and McGee about the right extent of the Law. Here too we come upon another

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[13] People who have been interested in ANT sometimes feel "betrayed" by the AIME project as if it was a return to the social theory they have learned to abandon without realizing that the two projects have been set concurrently.

[14] The AIME project is so far organized in four groups : those who totally ignore the subject/object relation ; those who are said to be object-oriented ; the third grouo which is subject-oriented (and to which [LAW] belongs ; and the fourth which gathers the modes which establishes complex relations between objects and subjects.

[15] In AIME subjectivity is not the starting point of the analysis, but what is generated by each mode, each mode providing a different layer or tone or flavour or constituent of what it is to be subject.

discussion about the limit between outside and inside, or rather between past and present.

It is risky for an amateur to offer a settlement to such a technical controversy, but it seems to me that once you accept the notion of jurimorphs, both parties agree with one another more than they think. The more law develops, the more it populates the world with jurimorphs. To the point where you end up inhabiting an ecosystem where every aspect is made of arrow-pointing entities, some still closely connected to a judge's decision (Gutwirth's position), others removed by so many steps that the judge's presence is made totally invisible (McGee's and Susan Silbey's position). The two arguments are rendered comparable once you begin considering the *number* of jurimorphs that have to be aligned for any juridical trajectory to circulate. And the only difference between the two positions is how many steps you are prepared to take. If I click without thinking on the "Agree" button at the bottom of a new version of some software, or if I slow down because of a speed bump, I might feel far away from any bench; except that, at some point in the past, lawyers had been much closer to some adversarial encounters where it is very plausible that lawyers, attorneys, judges and prosecutors could have been seated. If not, I would *not be asked to* click on the button or I would *not be forced* to slow down to save my car's shock absorbers instead of obeying to the "slow" sign. If they are there, some decision has been made.

A metaphor might help here: everyone knows that a magnetized needle indicates *directly* where the North pole roughly lies; but, in addition, geologists know, through very elaborate and *indirect* steps, how to extract from any rock that's part of the ocean floor the direction of the magnetic pole at the time when it solidified out of the magma[16] (in the long history of the Earth, magnetic poles keep reversing dramatically — much like jurisprudence!). In the same way, every element touched by the morphing activity of law freezes in a shape that most of the time — but not always — keeps the arrow-like quality typical of law even long after the "passage" of the legal fluid. But in that case, it requires more work to detect the morphing than when you are filing for a divorce or being summoned to a criminal court. So in the end, Law1 and Law2, to use Gutwirth's classification, are the

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[16] By the way, contrary to de Sutter's bizarre critique in his chapter, geologists know perfectly how to reverse what is magma and what is solidified rock, which is apparently impossible for philosophers who want to have "plasma" on the one hand and "trace" on the other without realizing they are exactly the same but at two stages in time. To try to distinguish the two would be like asking if a fishing net is made of threads or of voids!

same, just as Science-made is the same as Science-in-action, but simply taken at different moments in their process of crystallization.[17]

What gives a certain domain-like tonality to the practice of law (to the point that observers are always tempted to speak of the Law with a capital L) is that no matter how remote the jurimorphs are from one another they establish connections *only* with other jurimorphs — just like Lego blocks. So, from the same viewpoint, you can either detect only legal ties — the connections — or only extralegal elements — the blocks. And since there is no other *content* to the legal mode than establishing this sort of continuity, it is just as true to say that it "covers" everything — through connections— or that it is almost invisible — when you look at the blocks. This is why speaking about legal matters is always a matter of dealing with membranes and filaments. If ever the metaphor of a net had a meaning it is with law since its span is just as striking as its emptiness. It is just as true to say that it is the best totalizing instrument since, from any point, you may call all the other arguments to help you out, and yet what is coming to your rescue is only the tiny thread of *vinculum juris* — nothing else, nothing more.

This is also why there is never any way to agree about the "fragile force of law" since it is either amazingly strong (jurimorphs snap nicely into one another and allow claims to travel along vast distances to the astonishment of observers) or amazingly weak (it says nothing substantial about any state of affairs and fails miserably to "defend civilization against evil" to the great lamentation of the same observers). How odd to consider that, of all the modes, it is the one most easily confused with a domain whereas its ability to reign, cover, swallow, absorb, replace what it is supposed to "dominate" is so limited. If it is true that the Romans are the first to have extracted this mode as such, it is easy to understand their enthusiasm for a mode so powerful and yet so devoid of content. No! A mode so powerful because it is so astutely devoid of any other content than its connectedness through every possible entity.

The reason why it is so important to articulate a topology made of membranes and filaments is that it provides a way to overcome the

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[17] Gutwirth (this volume) "The interplay between values and their institution, transposed upon the relations between law2 and Law1, shines a light on different aspects of law. First, it explains the complex conjunction between the age old and rather stable regime of enunciation of law2 (or [LAW]) that subsisted and persisted since the Romans, and the always changing (sometimes even volatile) normativity and rules of Law1 which are dependent of a lot heterogeneous factors and their common history. Gutwirth (p.xx).

disappointment that strikes so many critiques at this slow and meandering account of legal practices. "Where is justice", one could ask? How would you fight exploitation and domination with such a weakened, slow, limited, down to earth definition of law? Where is law "speaking truth to power"? Where is morality? And yet, what could pass for a deflationary move is not a return to "black letter law", to positivism and to formalism. Attention to the "red and bright letter of the law" leads very precisely to the *crossings* with the other modes. Not expecting too much from Law is the first move necessary to differentiate the many components making up this apparent domain. However the whole project of the Inquiry is to prepare the second move: searching for an alternative *institution* that would respect its peculiar ontology. It is at this point that diplomacy could begin. Since we are not there yet, let me conclude on a few more remarks on how to pursue the task of deamalgation.

III- 1- One of the advantages of AIME, in my view, is that it allows for an extension of the comparative method until we begin to be articulate enough to grant each mode its exact ontological weight without always resorting to the two conventional templates: objects-out-there-in-the-world and ideas-humans-have-in-their-head. The distinction I just made between an analysis in terms of modes and an analysis in terms of domains could be clarified even further by commenting on the nice final chapter of this volume on what could have been the crossing coded [FIC.LAW] in our jargon. Naturally, we would go nowhere were we to start with a "collision between the actual world and the possible world". This would be trying to shoehorn all entities into the two usual templates of object and subject. "Actual world" has no more meaning than "underlying social structure" or "overlying norms". Those expressions are tantamount to saying "complex amalgams of so many things that we abandon the idea of disentangling them". The ANT and AIME joint project is to replace those meaningless terms by actionable and negotiable expressions. This is what I mean by shifting from modernism to anthropology of the Moderns.

Contrary to Law, fiction [FIC] is not a domain at all but what infuses all the subsequent modes because of its very simple phenomenon that semioticians have called *shifting* or *shifting out*.[18] Among the enterprises that make full use of this ability, the Western tradition has developed a specialized art form that we can call literature. Once this art form is established, it is fairly possible to bring any other text to resemble or bear

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[18] modesofexistence.org/xx

upon literature. However, when this is done, it is what could be called a *fictionalization* of whatever has been brought in.[19] The key to interpreting the course of action [PRE] has been shifted from [LAW] to [FIC]. Take for instance a passage of Cooren's case (p. xx). Read as fiction [FIC], you immediately detect how much it depends on a *previous* work of figuration.

> "[53] The litigation **raises** two questions:
> Has the plaintiffs' right to appeal **expired**?
> Were the plaintiffs erroneously remunerated as intermediary resources from April 1, 2001 to December 4, 2003? Did they **qualify** as intermediary resources before April 1, 2001?" (p. 11)

The decision could not even begin to be understood without recruiting and streamlining a large number of actors — litigation, plaintiff's right, intermediary resources — and actions — raising, expiring, remunerating, qualifying — shifted out and delegated to different spatial, temporal and "actantial" roles — "plaintiffs" transformed into "intermediary resources" on "December 4, 2003". It is actually the multiplicity of those shiftings out that Cooren underlines with his concept of "ventriloquism". I have myself done this extensively with scientific literature, taking it out of the [REF] key to reveal how much it depends on [FIC] to succeed in its referential work.[20]

Such fictionalization however cannot maintain the other key in focus; it's like taking a close-up photograph with the result that the background will be blurred. This is clearly the case with Barter's example. The comparison established by his chapter works nicely but only among texts seized *qua texts*. To the corpus selected out of novels in which characters have been given the

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[19] The pivot table is a good site to follow how the key of one mode may be used to read (that is, to specifically *mis*read) all the others. In the same way that it is possible to read all the modes as example of law — juridicization — including reproduction [REP.LAW], it is possible to read all modes as cases of fiction [FIC]. It is the task of preposition [PRE] to counteract those attempts at hegemony by showing how they are made and what they reveal or hide of the interpreted mode. This is what I mean by extending the comparative method inside the anthropology of the Moderns.

[20] More tellingly in the (in)famous paper on Einstein's little book on relativity (Bruno Latour. "A Relativist Account of Einstein's Relativity." *Social Studies of Science* 18 (1988): 3-44), written, by the way, the same year as *Science in Action* proving, once again, how ANT and AIME have worked together all along. and also Deleuze on delegated charactes cites in xx.

figure of judges or "master of chancery",[21] has been added one other item written by a collective author known as "the Supreme Court". The fact that some items come from novelists and another one from judges is immaterial here since they have been made part of the same corpus by coming upon the terrain of literature. But through such a move, 1857 U.S. *Supreme Court decision in Dred Scott v. Sandford* has been lifted out of the legal trajectory and, if we build upon what has been said above, has quickly lost its quality as a jurimorph (except for the para-textual elements — italics and coded reference — so important for eventually redirecting the argument back toward the source). From then on, the analysis *does not compare literature and law* but characters in literature whose writers employ vastly different styles, effects and narrative strategies. It is of course of great interest to compare those little world-building activities, but the difference between, let's say Melville and McEwan or Coetzee, are just as great as those between McEwan and the Supreme Court. All along, we remain inside literature, at no point moving on to law. Here again fiction does not trace a border with law in the way Germany does with Belgium. Fiction is inside every single element of law just as much as the card-board, paper or zinc remains "inside" the signposts I mentioned above. To use Graham's metaphor, you have moved the radio tuner and captured another frequency "in the same air space".

To detect the crossing [FIC.LAW] we would need to get some interference between the two modes, a category mistake or at least some hesitation as to which key to use, which radio frequency to select. Cases of plagiarism brought to court would offer a symmetric case from the one studied by Barter, the key being shifted, this time, from [FIC] to [LAW] by clerks poring over a corpus of novels to detect whether or not the intertextual exchanges qualify as a fraud — while the lawyer for the defense would plead the rights of "artist imagination". And it would the case, again, with the very notion of "author".[22] It would also be the case, but in reverse, if an artist not only fictionalizes but this time *aesthetizes* a text of law, making the viewer sensitive to the style, to the typography, to the materiality of the inscription, and in doing so points out the oscillation or the vibration between form and matter which is one of the odd features of beings of fiction. This is the case for instance of Armin Linke's book on the Law

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[21] A nice recent example could be Ian McEwan *The Children Act* where the main character is Fiona a London judge.

[22] Mario Biagioli, and Peter Galison. *Scientific Authorship: Credit and Intellectual Property in Science* P. London: Routledge, 2002.

Courts.[23] Such an aesthetization is often used to underline the "melodrama" of the theater of law, a common enough cliché of critical discourse, transforming the jurimorphs into so many props and characters of some pageantry on stage. Examples could be multiplied, but what should be clear is that the presence of fiction throughout the legal trajectory does not allow us to confuse the two because law *streamlines* and jurimorphs all characters it gets from fiction to get at its own goal — keeping the shifted frames connected even though it is drastically impossible to do so.[24] As soon as this goal is interrupted, law stops being law. The same phenomenon happens with reference [REF], whose use of fiction is just as extensive as that of law, but which streamlines all the characters to achieve a different goal, this time access to the far away — a task just as impossible and but which the referential chain succeeds in doing nonetheless. In that sense, it is just as accurate to say that fiction and law never connect — since the shifting out is reversed — as to say that assignation [LAW] totally depends on fiction, just as much as does reference [REF].

2- Another deamalgamation that would be of great interest is the one alluded to in the fascinating chapter by Mariana Valverde and Adriel Weaver

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[23] Aesthetization brings the topic at hand inside the domain of art forms, a limited and recent subset of what could be fictionalized. An interesting example of such a hybrid study has been made by Gustav Kalm and xx on the aesthetic dimension of law firm offices and lawyers' demeanor (modesofexistence/xx).

[24] McGee (2013) p. 214 puts it best: "Examples of the problem are easy to imagine: placed before me is a document containing my name signed in ink, dated May 23, 2008 in Philadelphia, Pennsylvania. In the non-legal modes— say, that of the persistence of my body [REP]—this document's contents do not coincide with the actually existing individual sitting at his desk writing these words. The document reflects a series of shiftings-out. The "author" of the document, or one of its signatories, **has my name but is not me**: presently, this "author" looks in fact like a "character" in another drama. The time and place are also entirely different: it is not May 2008, I am not in Philadelphia. There are, in other words, a series of **disjunctions** between the figures populating this document and the author of the present text. It is only in the enunciative regime of law that these disjunctions are **bridged**. By a series of legal mediations, the document's figures—which are or seem to be beings of fiction [FIC]—are connected to the enunciative level that I occupy at any subsequent time, with the consequence that, thanks not only to this document but also, and more importantly, **to the legal means of connection**, I am legally married to another that has signed her name, wisely or unwisely, to the very same document. By way of law, this specific sequence of enunciative planes is identified and selected from a staggering multiplicity of others. They are **telescoped** and made to **coincide**." (my emphasis).

on the "honour of the Crown". Here we witness judges juggling with politics, morality, religion and law in the most clever and devious way.[25] I often wonder why the modes in AIME have assembled themselves by groups of three, as if it was imposed by some mysterious "system" or by some numerological trick. It is hard however not to recognize the filiation, in the history of the Moderns, that the three modes making up the third group of quasi-subjects have with one another. A fascinating feature of most of the chapters in this volume is that they seem to accept the idea that normativity is not at all a feature of assignation [LAW] but a multimodal term if any is. I concur. What is called normative power is the list of all the conditions of felicity of all the modes added to one another, beginning with those of reproduction [REP] all the way to those of morality [MOR]. Thus any understanding of the "state of law", this most ambiguous term, should be preceded by tearing apart the various threads making up what "enforces" it. Any law enforcement relies on a relay race where so many different entities are passing the baton to so many teams made of so many different characters, that something is immediately missed when an analysis is made in terms of layers or domains.[26] Here again we need to be able to define the nature of the connections [PRE] without losing sight that they have the shape of networks [NET].

Such an enterprise is especially important to reopen the question of *sovereignty*. If there is one amalgam that precludes the analysis in philosophy, in sociology as well as in economics and political science, it is the State, this makeshift pile of arcane emblems. Politics, law and religion have so greatly exchanged their properties that it is very difficult to disentangle them and the last thing you want to have is a "theory of the State". "State" like "society" is not what provides an explanation but what should be explained. Especially when the question of enforcing the law is being raised. The

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25 A beautiful example of the [POL.LAW] crossing mentioned by Harman can be found in the way judges take upon themselves to use law for the benefit of the political Circle in Valverde and Weaver (this volume): "And addressing the question of why the government of the day – today's 'Crown' – should be obligated to do things not contained in any treaty and not arising from the law of fiduciary duty, the answer given is that the Crown of today, judges feel, has to make an effort to repair "**the ongoing rift in the national fabric**" (Manitoba Métis para. 140) that the history of aboriginal-white relations has created." ' (p. xx) (my emphasis).

26 This is why de Bellaing's chapter is so interesting on the detailed manner by which the law enforcement quality control of law enforcement itself may be achieved. If you "put it into context" (Society, the State) the efforts of policemen to police themselves become incomprehensible.

modernist obsession with the sovereignty of the State has been a way to settle the religious wars of the 16ᵗʰ century by way of some sort of armistice rather than providing the time necessary to arrive at a peace treaty. To stop atrocities, another monster has taken the stage but without allowing any settlement of what should be expected from religion [REL], what should be expected from politics [POL], and what should be expected from law [LAW].[27] The productions of the three modes have been compressed into the Leviathan rendered even more monstrous by the added fight between State and Market. The State has become the most obscure amalgam of all.

This is why there is something reassuring in the calamitous irruption of ecological mutations. At least the bundle of features stuffed into the inflated Body of the State can no longer stay there. Because ecology brings back the question of *where* the State resides, it also breaks down the abstract, utopic and simply confused *absence of place* over which sovereignty is supposed to reside.[28] The Leviathan is still around but it resembles an exploded Body Politic. If it is so important, as this volume shows, not to ask too much from assignation [LAW], it is because a mode succeeds much better at doing only one thing well. In the general reconfiguration of the older questions of sovereignty impacted by the intrusion of Gaia, what we should expect law to do, is to stick to jurimorphs and to reopen the key question of what it is for a claim to have a *ground*. Disappointment in what politics, law and religion may achieve is essential to regain some modicum of hope.

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[27] Eric Voegelin. *The New Science of Politics (new foreword by Dante Germino).* Chicago: The University of Chicago Press, [1952] 1987.
[28] Kenneth Olwig. "The Earth is Not a Globe: Landscape versus the 'Globalist' Agenda." *Landscape Research* 36.4 (2011): 401–15.